U. S. Work projects administration. Iowa.

# THE LEGAL STATUS

# OF WOMEN

# FROM 2250 B. C.

## VOLUME I

=1938=

nicus publishing company, inc.
444 FIFTH AVENUE, NEW YORK, N.Y. 10018

Law
Office

General law
U.S.W.P.
1938

andronicus pu
444 FIFTH A

F.E.R.A. 1940-2-6

SPONSORED BY

ATTORNEY GENERAL'S OFFICE

STATE OF IOWA

IN

COOPERATION WITH

WORKS PROGRESS ADMINISTRATION

PROJECT 2227

OFFICIAL PROJECT

65-72-4838

DES MOINES, IOWA

1938

cus publishing company, inc.
FIFTH AVENUE, NEW YORK, N.Y. 10019

LIBRARY OF CONGRESS
DEC 22 1939
DIVISION OF DOCUMENTS

androni
666 FIFTH

HARRY L. HOPKINS

Administrator

WORKS PROGRESS ADMINISTRATION

WASHINGTON, D. C.

GEORGE J. KELLER

Administrator

WORKS PROGRESS ADMINISTRATION

STATE OF IOWA

DIVISION OF WOMEN'S AND PROFESSIONAL PROJECTS

ELLEN S. WOODWARD

Assistant Administrator

WORKS PROGRESS ADMINISTRATION

WASHINGTON, D. C.

JESSIE L. HANTHORN

Director of Women's and Professional Division

WORKS PROGRESS ADMINISTRATION

STATE OF IOWA

dronicus publishing company, inc.

andronic
666

ACKNOWLEDGMENT

TO

EXECUTIVE COMMITTEE

O. E. KLINGAMAN

CURATOR - HISTORICAL, MEMORIAL AND ART
DEPARTMENT OF IOWA

J. D. DENISON

IOWA STATE LIBRARIAN

JESSIE L. HANTHORN

STATE DIRECTOR WOMEN'S AND PROFESSIONAL
DIVISION

ANNE CHATTERTON

FORMER DIRECTOR OF WOMEN'S PROFESSIONAL
DIVISION, POLK COUNTY

E. L. O'CONNOR

FORMER ATTORNEY GENERAL, STATE OF IOWA

A. HARLESS

PROJECT DIRECTOR

andronicus publishing company, Inc.
444 FIFTH AVENUE, NEW YORK, N.Y. 10019

TO

THE STUDENTS

OF

THE UNITED STATES OF AMERICA

THROUGH THEIR LEADERSHIP THESE VOLUMES MAY LEAD TO A LARGER AND DEEPER INTEREST IN THE INSPIRATION AND STUDY OF WOMEN'S LEGAL PROGRESS FROM EARLIEST RECORDS TO MODERN TIMES.

andronicus publishing company, inc.
111 FIFTH AVENUE, NEW YORK, N.Y. 10019

# INTRODUCTION

The purpose of these volumes is to present to students and layman, as well as to those versed in law, a survey of the status of women from about 2250 B.C. to the present time. Their contents reveal the results of a comparative study of their civil and political rights as regulated by the laws of the outstanding periods of civilization.

As the human race progressed gradually from the simplicity of primitive society to the complexity of what we now call civilized society, the rights and privileges of women passed in the same gradual way from unwritten to written enactments of laws, until in this modern age, the equality of women is usually accepted as being on the highest plain ever attained. It should be added here, however, that women never were subjected to such cruel and unjust treatment as some historians would lead us to believe. With the gradual advancement and progress of mankind, came the realization that the laws of their time were incomplete and did not suffice to meet the constant challenge of a changing and more complicated civilization. As a result of this realization of the necessity for changes in the legal procedures and laws pertaining to women in all countries throughout the ages, we have advanced to a higher state of codification, thus substituting liberty in the place of license in the personal, social, and business dealings between men and women.

These volumes have grown out of authentic writings containing the facts established by eminent authorities, and should, to interested persons, prove to be a ready reference that will save them much time in research and untold hours of arduous study. In all cases other than where exact dates are given, approximations in our classifications of time periods have been used. It is not the object of these volumes to establish facts for the scientific world, but rather, to present to all interested persons a picture of the present legal status of women showing how and why it has evolved with our changing civilization down through our history. All historical, philological and technical discussions have been avoided, in an effort to keep out of the picture all unnecessary and distracting details. As a result, the reader will have

andronicus publishing company, Inc.
666 FIFTH AVENUE, NEW YORK, N.Y. 10019

a clearer conception of the laws laid down governing women throughout the ages, and he will not be puzzled with different writers' interpretations.

These volumes will be of interest to all persons who are interested in tracing the progress and advancement of women's legal status down through the centuries. They reveal much information hitherto not generally known which increases our knowledge of the ancient and modern laws which are composites of judicial decisions, customs, manners, and social institutions. This increased knowledge should result in a deeper respect for and a more genuine appreciation of our forefathers, as well as a fuller and more complete realization that, with this increased knowledge of antiquity, we can better cope with the complex questions and problems of our day.

The fact must be recognized that this is not a complete study of women's rights. However, it is a general record of a great portion of what is known about the subject. It should be pointed out also that what has been omitted as being fragmentary and unauthenticated, surely will create the desire on the part of the reader for further research and direction into this important field of little known and unrevealed history.

Because of the large scope that was undertaken in this survey, the reader will realize at once that it would be impracticable to include the laws of every country in such a study as this. The laws in this survey were selected as being representative of the greater part of the peoples of the world, i.e., for the Latin American countries, the Argentine Code was used; for the Hebrew peoples, the Jewish Code of Jurisprudence and the Pentateuch were used; for the Mesapotamian peoples, the Hammurabi, the Assyrian, and the Hittite Codes were used; et cetera. The charts for the United States will provide a quick reference covering the positive laws regulating women in all of the 48 States. The usefulness of each code is enhanced by a complete index which accompanies volume II.

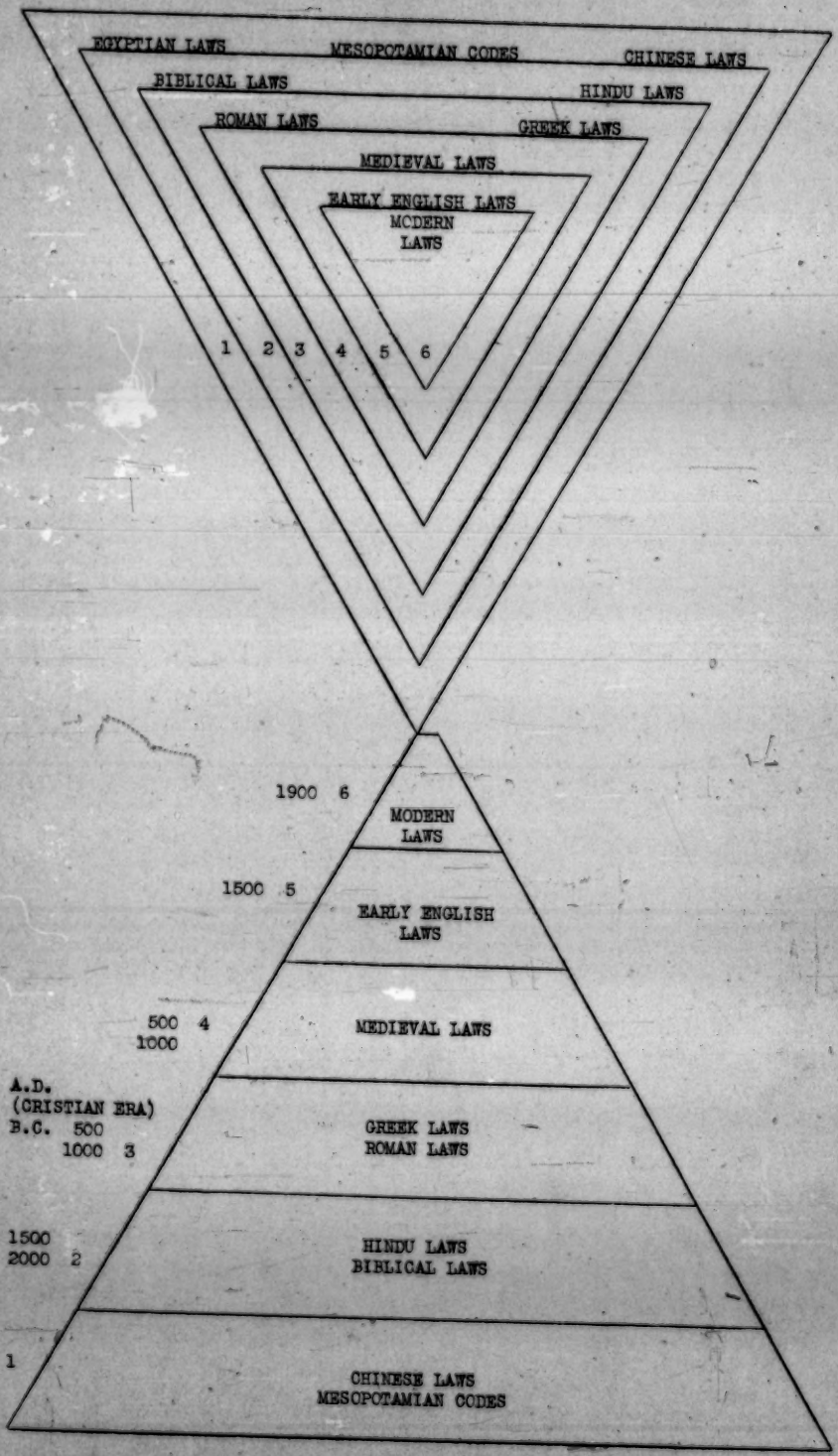
andronicus publishing company, Inc.
444 FIFTH AVENUE, NEW YORK, N.Y. 10019

This survey is the result of the splendid cooperation of many persons who gave the author valuable suggestions in the preparation of the manuscript for these volumes. Since it hardly would be possible to give due acknowledgments here to each of these persons, it is hoped that this general statement of appreciation will suffice for each one to whom the author is deeply indebted.

Des Moines, Iowa

February 1938

andronicus publishing company, Inc.




hdronicus publishing company, inc.
666 FIFTH AVENUE, NEW YORK, N.Y. 10019

# TABLE OF CONTENTS

## MESOPOTAMIAN

### PART I


| | PAGE |
|---|---|
| THE CODE OF HAMMURABI | 1 |
| THE ASSYRIAN CODE | 10 |
| THE HITTITE CODE | 19 |


## CHINESE

### PART II


| | |
|---|---|
| THE CIVIL CODE OF THE REPUBLIC OF CHINA | 32 |


## BIBLICAL

### PART III


| | |
|---|---|
| THE PENTATEUCH | 49 |
| COVENANT CODE | |
| DEUTERONOMIC CODE | |
| HOLINESS CODE | |
| PRIESTLY CODE | |
| JEWISH CODE OF JURISPRUDENCE | 60 |


## HINDU

### PART IV


| | |
|---|---|
| THE LAWS OF MANU | 139 |
| THE HINDU CODE | 172 |


## GREEK

### PART V


| | |
|---|---|
| THE TWELVE TABLES OF GORTYN | 286 |


ndronicus publishing company, inc.
444 FIFTH AVENUE, NEW YORK, N.Y. 10019

androni

## ROMAN

### PART VI


| | PAGE |
|---|---|
| THE TWELVE TABLES | 244 |
| THE INSTITUTES OF JUSTINIAN | 253 |
| THE DIGEST OF JUSTINIAN | 289 |


## MEDIEVAL

### PART VII


| | |
|---|---|
| LEX SALICA | 332 |
| VISIGOTHIC CODE | 339 |
| ANCIENT LAWS AND INSTITUTES OF WALES (HOWEL) | 383 |
| ANCIENT LAWS AND INSTITUTES OF ENGLAND, VOLS. I - II | 409 |


andronicus publishing company, inc.
[illegible] FIFTH AVENUE NEW YORK, N.Y. 10018

# PART I

## MESOPOTAMIAN

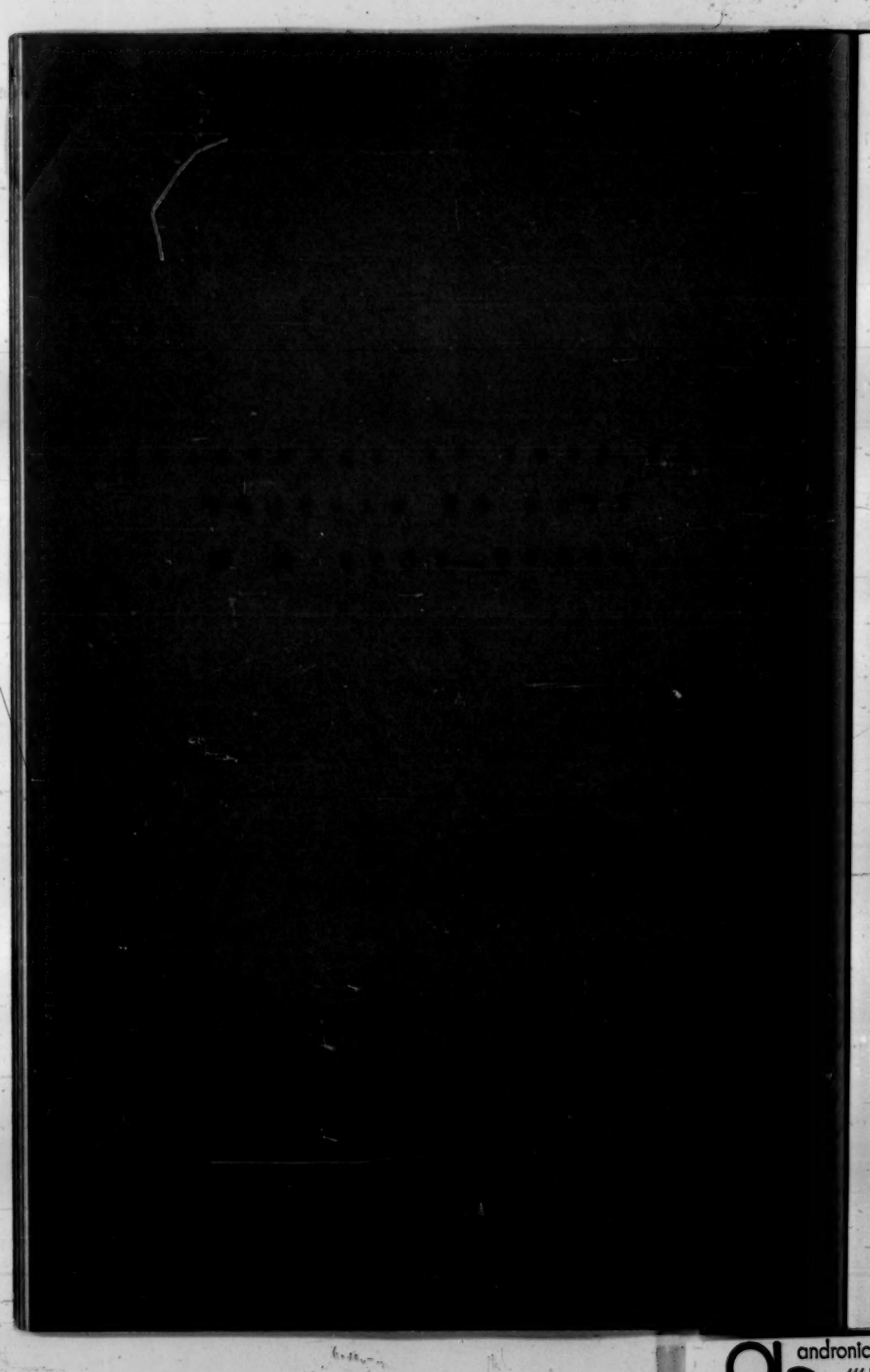
ndronicus publishing company, inc.
666 FIFTH AVENUE, NEW YORK, N.Y. 10019

# THE CODE OF HAMMURABI

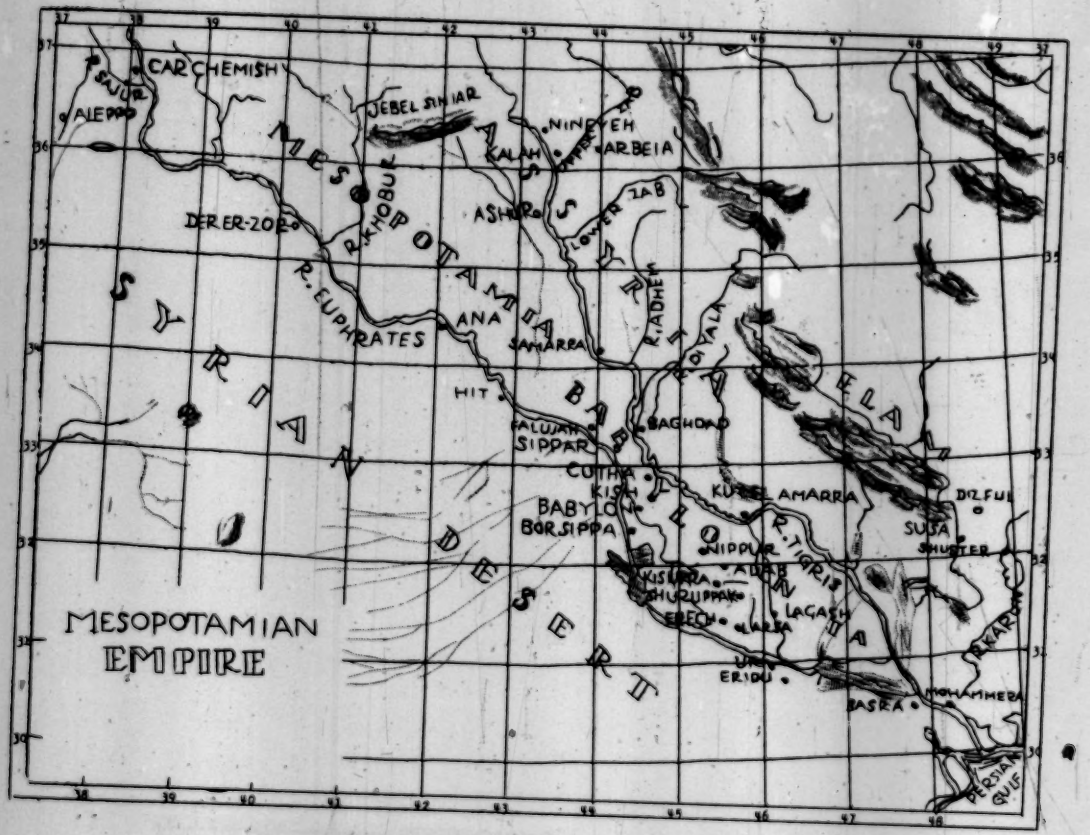
## KING OF BABYLON

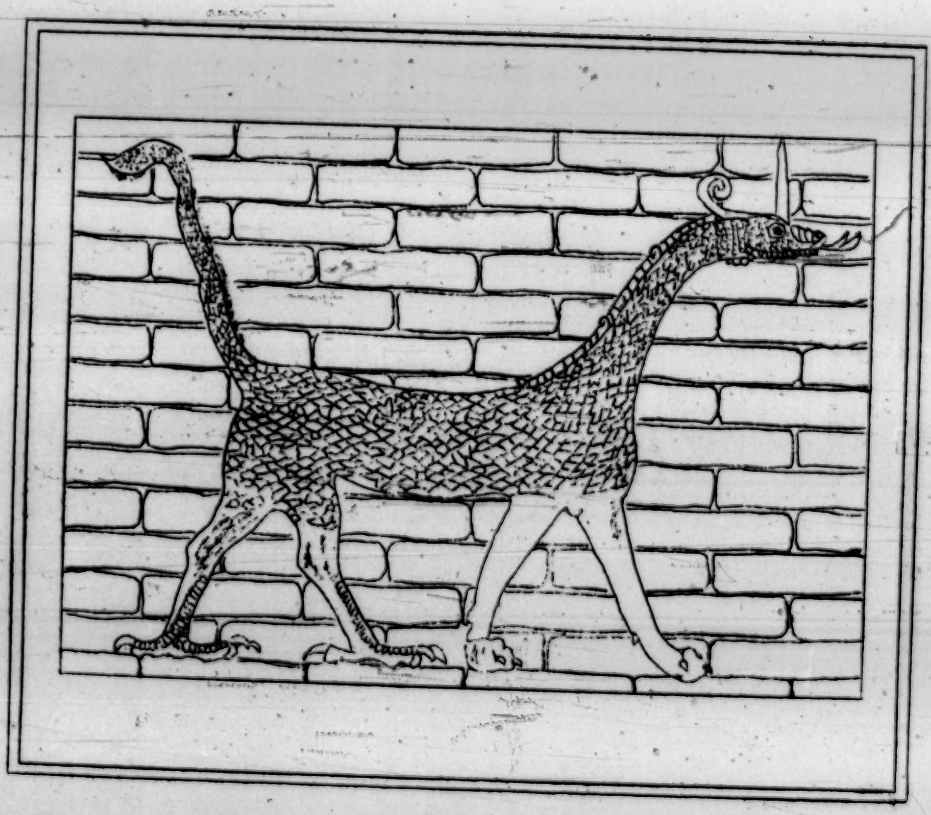
## ABOUT 2500 B. C.

adronicus publishing company, inc.
444 FIFTH AVENUE, NEW YORK, N.Y. 10018

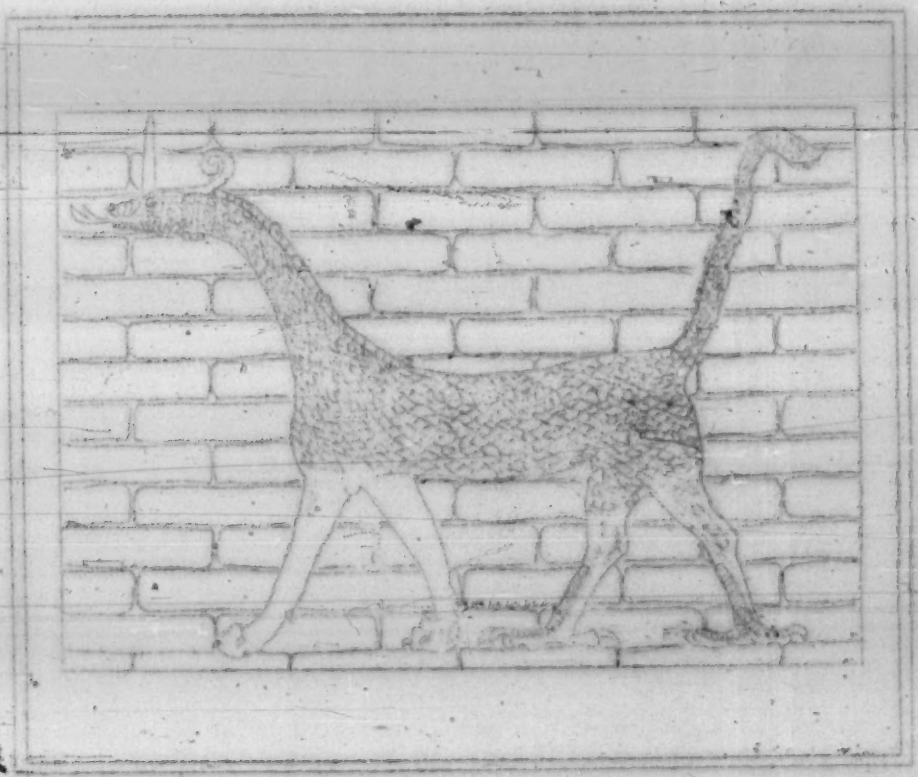


dronicus publishing company, Inc.
666 FIFTH AVENUE, NEW YORK, N.Y. 10019





adronicus publishing company, inc.
666 FIFTH AVENUE, NEW YORK, N.Y. 10019



# THE CODE OF HAMMURABI

## TRANSLATION

7.

"If a man purchase silver or gold, manservant or maidservant, ox, sheep or ass, or anything else from a man's son, or from a man's servant without witnesses or contracts, or if he receive (the same) in trust, that man shall be put to death as a thief."

15.

"If a man aid a male or female slave of the palace, or a male or female slave of a freeman to escape from the city gate, he shall be put to death."

16.

"If a man harbor in his house a male or female slave who has fled from the palace or from a freeman, and do not bring him (the slave) forth at the call of the commandant, the owner of that house shall be put to death."

17.

"If a man seize a male or female slave, a fugitive, in the field and bring that (slave) back to his owner, the owner of the slave shall pay him two shekels of silver."

18.

"If that slave will not name his owner, he shall bring him to the palace and they shall inquire into his antecedents and they shall return him to his owner."

19.

"If he detain that slave in his house and later the slave be found in his possession, that man shall be put to death."

20.

"If the slave escape from the hand of his captor, that man shall so declare, in the name of God, to the owner of the slave and shall go free."

28.

"If an officer or a constable, who is in a fortress of the king, be captured (and) his son be able to conduct the business, they shall give to him the field and garden and he shall conduct the business of his father."

29.

"If his son be too young and be not able to conduct the business of his father, they shall give one-third of the field and of the garden to his mother, and his mother shall rear him."

36.

"In no case shall one sell the field or garden or house of an officer, constable or tax-gather."

andronicus publishing company, inc.

37.

"If a man purchase the field or garden or house of an officer, constable or tax-gather, his deed-tablet shall be broken (canceled) and he shall forfeit his money and he shall return the field, garden or house to its owner."

38.

"An officer, constable or tax-gather shall not deed to his wife or daughter the field, garden or house, which is his business (i.e., which is his by virtue of his office), nor shall he assign them for debt."

39.

"He may deed to his wife or daughter the field, garden or house which he has purchased and (hence) possesses, or he may assign them for debt."

40.

"A woman, merchant or other property-holder may sell field, garden or house. The purchaser shall conduct the business of the field, garden or house which he has purchased."

108.

"If a wine-seller do not receive grain as the price of drink, but if she receive money by the great stone, or make the measure for drink smaller than the measure for corn, they shall call that wine-seller to account, and they shall throw her into the water."

109.

"If outlaws collect in the house of a wine-seller, and she do not arrest these outlaws and bring them to the palace, that wine-seller shall be put to death."

110.

"If a priestess who is not living in a MAL. GE. A, open a wine-shop or enter a wine-shop for a drink, they shall burn that woman."

111.

"If a wine-seller give 60 KA of drink....on credit, at the time of harvest she shall receive 50 KA of grain."

117.

"If a man be in debt and sell his wife, son or daughter, or bind them over to service, for three years they shall work in the house of their purchaser or master; in the fourth year they shall be given their freedom."

118.

"If he bind over to service a male or female slave, and if the merchant transfer or sell such slave, there is no cause for complaint."

119.

"If a man be in debt and he sell his maidservant who has borne him children, the owner of the maidservant (i.e., the man in debt) shall repay the money which the merchant paid (him), and he shall ransom his maidservant."

127.

"If a man point the finger at a priestess or the wife of another and cannot justify it, they shall drag that man before the judges and they shall brand his forehead."

andronicus publishing company, inc.

128.

"If a man take a wife and do not arrange with her the (proper) contracts, that woman is not a (legal) wife."

129.

"If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband of the woman would save his wife, or if the king would save his male servant (he may)."

130.

"If a man force the (betrothed) wife of another who has not known a male and is living in her father's house, and he lie in her bosom and they take him, that man shall be put to death and that woman shall go free."

131.

"If a man accuse his wife and she has not been taken in lying with another man, she shall take an oath in the name of God and she shall return to her house."

132.

"If the finger have been pointed at the wife of a man because of another man, and she have not been taken in lying with another man, for her husband's sake she shall throw herself into the river."

133.

"If a man be captured and there be maintenance in his house and his wife go out to her house, she shall protect her body and she shall not enter into another house."

133A.

"(If) that woman do not protect her body and enter into another house, they shall call that woman to account and they shall throw her into the water."

134.

"If a man be captured and there be no maintenance in his house, and his wife enter into another house, that woman has no blame."

135.

"If a man be captured and there be no maintenance in his house, and his wife openly enter into another house and bear children; if later her husband return and arrive in his city, that woman shall return to her husband (and) the children shall go to their father."

136.

"If a man desert his city and flee and afterwards his wife enter into another house; if that man return and would take his wife, the wife of the fugitive shall not return to her husband because he hated his city and fled."

137.

"If a man set his face to put away a concubine who has borne him children or a wife who has presented him with children, he shall return to that woman her dowry and shall give to her the income of field, garden and goods and she shall bring up her children; from the time that her children are grown up, from whatever is given to her children they shall give to her a portion corresponding to that of a son and the man of her choice may marry her."

andronicus publishing company, inc.

129.

"If a man and a wife and do not cohabit with her the [wife] concerns, but woman is not a [local] wife."

130.

"If the wife of a man be taken in lying with another man, they shall [then] not throw them into the water. If the husband of the woman could save his wife, or if the king would have his own servant (be set)."

130.

"If a man [forces the (betrothed) wife of another who has not known a man] and is living in her father's house, and he lie [with her] and they take her, that man shall be put to death and that woman shall go free."

131.

"If a man accuse his wife and she not been taken in lying with another man, she shall take an oath in the name of God and she shall return to her house."

132.

"If the finger have been pointed at the wife of a man because of another man, and she have not been taken in lying with another for her husband's sake she shall throw herself into the river."

132.

"If a man be captured and there be no maintenance in his house, his wife go out to her house, she shall protect her body and she shall not enter into another house."

133.

"(If) that woman do not protect her body and enter into another house, they shall call that woman to account and they shall throw her into the water."

133.

"If a man be captured and there be no maintenance in his house, and his wife enter into another house, that woman has no blame."

134.

"If a man be captured and there be no maintenance in his house, that his wife openly enter into another house and their children it later her husband return and arrive in his city, that woman shall return to the husband (and) the children shall go to their father."

135.

"If a man forsake his city and flee and afterwards his wife enter into against he-of it that man return and could take his wife, the wife of the fugitive shall not return to her husband because he broke his city and fled."

136.

"If a man not hate his wife to put [her] away a container who has borne him children or a wife who has presented him with children, he shall return to that woman her dowry and shall give to her the income of [land, garden and goods and she shall bring up her children] from the time that her children are grown up, then whatever is given to her children they shall give to her a portion correspondent, to that of a son and the man of her choice may marry her."

138.

"If a man would put away his wife who has not borne him children, he shall give her money to the amount of her marriage settlement and he shall make good to her the dowry which she brought from her father's house and then he may put her away."

139.

"If there were no marriage settlement, he shall give to her one mana of silver for a divorce."

140.

"If he be a freeman, he shall give her one-third mana of silver."

141.

"If the wife of a man who is living in his house, set her face to go out and play the part of a fool, neglect her house, belittle her husband, they shall call her to account; if her husband say: 'I have put her away,' he shall let her go. On her departure nothing shall be given to her for her divorce. If her husband say: 'I have not put her away,' her husband may take another woman. The first woman shall dwell in the house of her husband as a maid servant."

142.

"If a woman hate her husband, and say: 'Thou shalt not have me,' they shall inquire into her antecedants for her defects; and if she have been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and shall go to her father's house."

143.

"If she have not been a careful mistress, have gadded about, have neglected her house and have belittled her husband, they shall throw that woman into the water."

144.

"If a man take a wife and that wife give a maid servant to her husband and she bear children; if that man set his face to take a concubine, they shall not countenance him. He may not take a concubine."

145.

"If a man take a wife and she do not present him with children and he set his face to take a concubine, that man may take a concubine and bring her into his house. That concubine shall not rank with his wife."

146.

"If a man take a wife and she give a maid servant to her husband, and that maid servant bear children and afterwards would take rank with her mistress; because she has borne children, her mistress may not sell her for money, but she may reduce her to bondage and count her among the maid servants."

147.

"If she have not borne children, her mistress may sell her for money."

148.

"If a man take a wife and she become afflicted with disease, and if he set his face to take another, he may. His wife, who is afflicted with disease, he shall not put away. She shall remain in the house which he has built and he shall maintain her as long as she lives."

149.

"If that woman do not elect to remain in her husband's house, he shall make good to her the dowry which she brought from her father's house and she may go."

ondronicus publishing company, Inc.

150.

"If a man give to his wife field, garden, house or goods and he deliver to her a sealed deed, after (the death of) her husband, her children cannot make claim against her. The mother after her (death) may will to her child whom she loves, but to a brother she may not."

151.

"If a woman, who dwells in the house of a man, make a contract with her husband that a creditor of his may not hold her (for his debts) and compel him to deliver a written agreement; if that man were in debt before he took that woman, his creditor may not hold his wife, and if that woman were in debt before she entered into the house of the man, her creditor may not hold her husband."

152.

"If they contract a debt after the woman has entered into the house of the man, both of them shall be answerable to the merchant."

153.

"If a woman bring about the death of her husband for the sake of another man, they shall impale her."

154.

"If a man have know his daughter, they shall expel that man from the city."

155.

"If a man have betrothed a bride to his son and his son have known her, and if he (the father) afterward lie in her bosom and they take him, they shall bind that man and throw him into the water."

156.

"If a man have betrothed a bride to his son and his son have not known her but he himself lie in her bosom, he shall pay her one-half mana of silver and he shall make good to her whatever she brought from the house of her father and the man of her choice may take her."

157.

"If a man lie in the bosom of his mother after (the death of) his father, they shall burn both of them."

158.

"If a man, after (the death of) his father, be taken in the bosom of the chief wife (of his father) who has borne children, that man shall be cut off from his father's house."

159.

"If a man, who has brought a present to the house of his father-in-law and has given the marriage settlement, look with longing upon another woman and say to his father-in-law, 'I will not take thy daughter;' the father of the daughter shall take to himself whatever was brought to him."

160.

"If a man bring a present to the house of his father-in-law and give a marriage settlement and the father of the daughter say, 'I will not give thee my daughter;' he (i.e., the father-in-law) shall double the amount which was brought to him and return it."

161.

"If a man bring a present to the house of his father-in-law and give a marriage settlement, and his friend slander him; and if his father-in-law say to the claimant for the wife, 'My daughter thou shalt not have,' he (the father-in-law) shall double the amount which was brought to him and return it, but his friend may not have his wife."

law publishing company inc.

162

"If a man take a wife and she bear him children and that woman die, her father may not lay claim to her dowry. Her dowry belongs to her children."

163.

"If a man take a wife and she do not present him with children and that woman die; if his father-in-law return to him the marriage settlement which that man brought to the house of his father-in-law, her husband may not lay claim to the dowry of that woman. Her dowry belongs to the house of her father."

164.

"If his father-in-law do not return to him the marriage settlement, he may deduct from her dowry the amount of the marriage settlement and return (the rest) of her dowry to the house of her father."

166.

"If a man take wives for his sons and do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of the father's house to their youngest brother, who has not taken a wife, money for marriage settlement in addition to his portion and they shall enable him to take a wife."

167.

"If a man take a wife and she bear him children and that woman die, and after her (death) he take another wife and she bear him children and later the father die, the children of the mothers shall not divide (the estate). They shall receive the dowries of their respective mothers and they shall divide equally the goods of the house of the father."

170.

"If a man's wife bear him children and his maidservant bear him children, and the father during his lifetime say to the children which the maidservant bore him: 'My children,' and reckon them with the children of his wife, after the father dies the children of the wife and the children of the maidservant shall divide the goods of the father's house equally. The child of the wife shall have the right of choice at the division."

171.

"But if the father during lifetime have not said to the children which the maidservant bore him: 'My children;' after the father dies, the children of the maidservant shall not share in the goods of the father's house with the children of the wife. The maidservant and her children shall be given their freedom. The children of the wife may not lay claim to the children of the maidservant for service. The wife shall receive her dowry and the gift which her husband gave and deeded to her on a tablet and she may dwell in the house of her husband and enjoy (the property) as long as she lives. She cannot sell it, however, for after her (death) it belongs to her children."

172.

"If her husband have not given her a gift, they shall make good her dowry and she shall receive from the goods of her husband's house a portion corresponding to that of a son. If her children scheme to drive her out of the house, the judges shall inquire into her antecedents and if the children be in the wrong, she shall not go out from her husband's house. If the woman set her face to go out, she shall leave to her children the gift which her husband gave her; she shall receive the dowry of her father's house, and the husband of her choice may take her."

andronicus publishing company, inc.

173

"If that woman bear children to her later husband into whose house she has entered and later on that woman die, the former and the later children shall divide her dowry."

174.

"If she do not bear children to her later husband, the children of her first husband shall receive her dowry."

175.

"If either a slave of the palace or a slave of a freeman take the daughter of a man (gentleman) and she bear children, the owner of the slave may not lay claim to the children of the daughter of the man for service."

176.

"And if a slave of the palace or a slave of a freeman take the daughter of a man (gentleman); and if, when he takes her, she enter into the house of the slave of the palace or the slave of the freeman with the dowry of her father's house; if from the time that they join hands, they build a house and acquire property; and if later the slave of the palace or the slave of the freeman die, the daughter of the man shall receive her dowry, and they shall divide into two parts whatever her husband and she had acquired from the time thay had joined hands; the owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children."

176A.

"If the daughter of the man had no dowry thay shall divide into two parts whatever her husband and she had acquired from the time they joined hands. The owner of the slave shall receive one-half and the daughter of the man shall receive one-half for her children."

177

"If a widow, whose children are minors, set her face to enter another house, she cannot do so without the consent of the judges. When she enters another house, the judges shall inquire into the estate of her former husband and they shall intrust the estate of her former husband to the later husband and that woman, and they shall deliver to them a tablet (to sign). They shall administer the estate and rear the minors. They may not sell the household goods. He who purchases household goods belonging to the sons of a widow shall forfeit his money. The goods shall revert to their owner."

178.

"If (there be) a priestess or a devotee to whom her father has given a dowry and written a deed of gift; if in the deed which he has written for her, he have not written 'after her (death) she may give to whomsoever she may please,' and if he have not granted her full discretion; after her father dies her brothers shall take her field and garden and they shall give her grain, oil and wool according to the value of her share and they shall make her content, she may give her field and garden to any tenant she may please and her tenant shall maintain her. She shall enjoy the field, garden or anything else which her father gave her as long as she lives. She may not sell it, not transfer it. Her heritage belongs to her brothers."

179.

"If (there be) a priestess or a devotee to whom her father has given a dowry and written for her, he have written 'after her (death) she may give to whomsoever she may please,' and he have granted her full discretion; after her father dies she may give it to whomsoever she may please after her (death). Her brothers may not lay claim against her."

antiquus publishing company, Inc.

180.

"If a father do not give a dowry to his daughter, a bride or devotee, after her father dies she shall receive as her share in the goods of her father's house the portion of a son, and she shall enjoy it as long as she lives. After her (death) it belongs to her brothers."

181.

"If a father devote a votary or NU. PAR to a god and do not give her a dowry, after her father dies she shall receive as her share in the goods of her father's house one-third of the portion of a son and she shall enjoy it as long as she lives. After her (death), it belongs to her brothers."

182.

"If a father do not give a dowry to his daughter, a priestess of Marduk of Babylon, and do not write for her a deed of gift; after her father dies she shall receive as her share with her brother's one-third the portion of a son in the goods of her father's house, but she shall not conduct the business thereof. A priestess of Marduk, after her (death), may give to whomsoever she may please."

183.

"If a father present a dowry to his daughter, who is a concubine, and give her to a husband and write a deed of gift; after the father dies she shall not share in the goods of her father's house."

184.

"If a man do not present a dowry to his daughter, who is a concubine, and do not give her to a husband; after her father dies her brothers shall present her a dowry proportionate to the fortune of her father's house and they shall give her to a husband."

186.

"If a man take a young child as a son and, when he takes him, he is rebellious toward his father and mother (who have adopted him), that adopted son shall return to the house of his father."

187.

"One may not bring claim for the son of a NER.SE.GA, who is a palace guard, or the son of a devotee."

192.

"If the son of a NER.SE.GA, or the son of a devotee, say to his father who has reared him, or his mother who has reared him: 'My father thou art not,' 'My mother thou art not,' they shall cut out his tongue."

193.

"If the son of a NER.SE.GA or the son of a devotee identify his own father's house and hate the father who has reared him and the mother who has reared him and go back to his father's house, they shall pluck out his eye."

194.

"If a man give his son to a nurse and that son die in the hands of the nurse, and the nurse substitute another son without the consent of his father or mother, they shall call her to account, and because she has substituted another son without the consent of his father or mother, they shall cut off her breast."

209.

"If a man strike a man's daughter and bring about a miscarriage, he shall pay ten shekels of silver for her miscarriage."

Lenox publishing company, Inc.

androni

210.

"If that woman die, they shall put his daughter to death."

211.

"If, through a stroke, he brings about a miscarriage to the daughter of a freeman, he shall pay five shekels of silver."

212.

"If that woman die, he shall pay one-half mana of silver."

213.

"If he strike the female slave of a man and bring abour a miscarriage, he shall pay two shekels of silver."

214.

"If that female slave die, he shall pay one-third mana of silver."

278.

"If a man sell a male or female slave, and the slave have not completed his month, and the bennu fever fall upon him, he (the purchaser) shall return him to the seller and he shall receive the money which he paid."

279.

"If a man sell a male or female slave and there be a claim upon him, the seller shall be responsible for the claim."

280.

"If a man purchase a male or female slave of a man in a foreign country, and if, when he comes back to his own land, the (former) owner of the male or female slave recognize his male or female slave--if the male or female slave be a native of the land, he shall grant them their freedom without money."

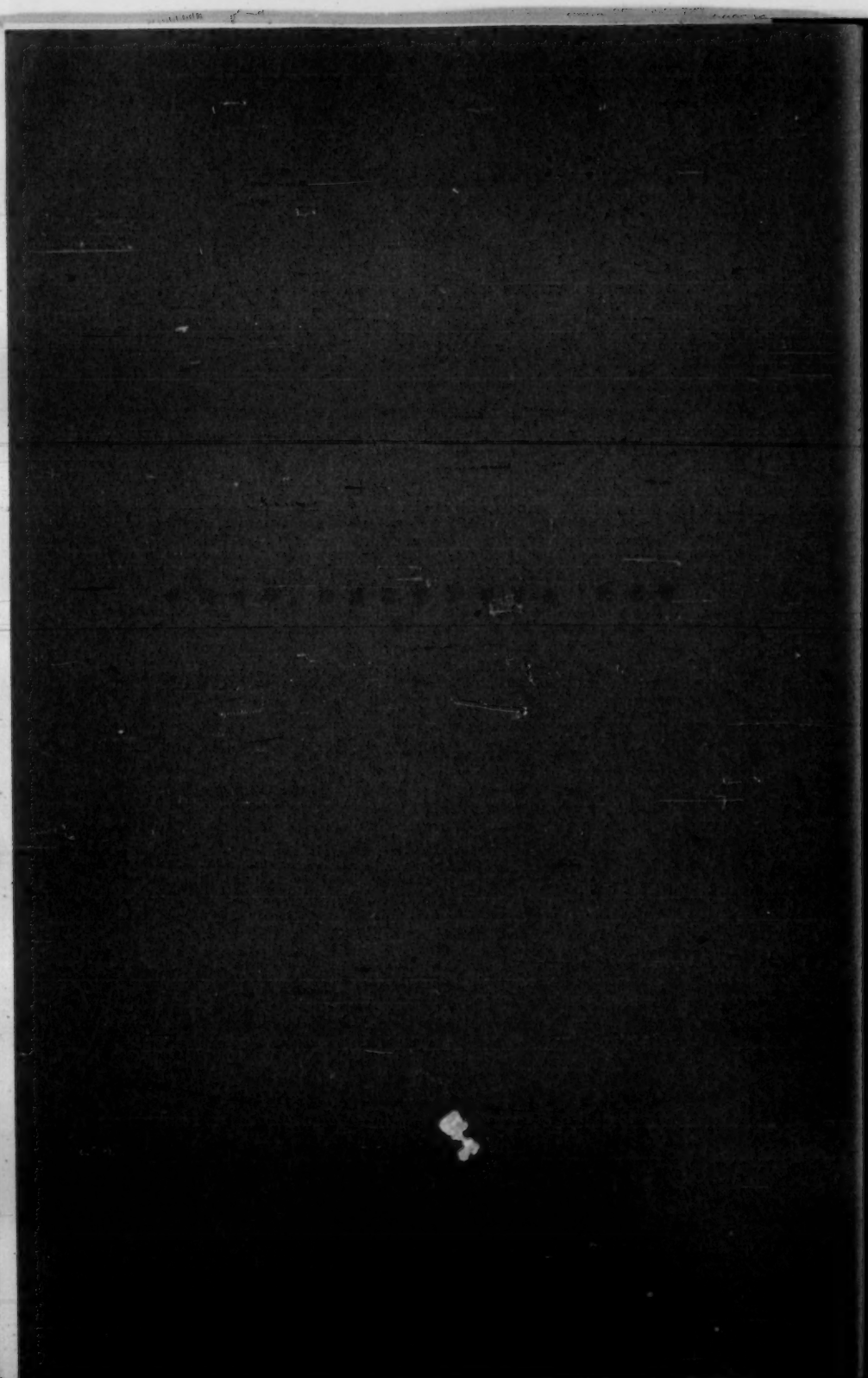
281.

"If they be natives of another land, the purchaser shall declare before God the money which he paid (for them), and the owner of the male or female slave shall give to the merchant the money which he paid out, and he (the owner) shall receive into his care his male or female slave."

andronicus publishing company, inc.

# THE ASSYRIAN CODE

andronicus publishing company, inc.



# THE ASSYRIAN CODE

## PART I

1

"If a woman, whether the wife of a man, or the daughter of a man, enter a temple, in the temple steal anything from a bin (?), and it be found in her hand, whether they prosecute her, or convict her, the one (?) prosecuting (?), before the God they shall inquire. According as he orders to be done, they shall do unto her."

2

"If a woman, whether the wife of a man or the daughter of a man, utter vulgarity or indulge in low talk, that woman bears her own sin; against her husband, her sons, or her daughters they shall have no claim (not draw nigh)."

3

"If a man be sick or dead, and his wife steal anything from (in) his house, to a man or to a woman or to anybody else give (it), the wife of that man and those who received (the stolen goods) they shall put to death. And if the wife of a man whose husband is in good health steal from the house of her husband, to a man or to a woman or to anybody else give (the stolen goods), the man shall prosecute his wife and shall impose a penalty. And the recipient (of the stolen goods) who received (them) from the hand of the wife of the man shall give (up) the stolen (goods) and a penalty like that which the man imposes upon his wife they shall impose upon the recipient of the stolen goods."

4

"If a male or a female slave from the hand of the wife of a man receive anything, the nose of the male or the female slave (and) their ear(s) they shall cut off. The stolen (goods) they shall restore in full. The man shall cut off the ears of his wife. But if he pardon his wife, do not cut off her ear(s), they shall not cut off (the ears) of the male or female servant; the stolen (goods) they need not restore in full."

5

"If the wife of a man from the house of another man steal anything, (and the value of the goods) exceed five manas of lead, the owner of the stolen goods shall take oath, 'Verily, I did not cause her to take anything, saying, "Steal from my house".' If her husband be willing, he may return the stolen (goods) and ransom her. He may cut off her ear(s). If her husband be not willing to ransom her, the owner of the stolen (goods) may seize her and cut off her nose."

6

"If the wife of a man place a deposit on the outside, the receiver holds stolen (property)."

7

"If a woman bring her hand against a man, they shall prosecute her; thirty manas of lead she shall pay; twenty blows they shall inflict on her."

10

"If a man or a woman enter the house of a man and kill a man or a woman, the avenger of blood (Lord, owner of life), if he wish, shall kill murderers. If he spare (them), he may take (their property?). . . . . .the murderers. . . . . .anything. . . . . .either . . . . . .from the house (?). . . ."

publishing company, inc.

12.

"If the wife of a man be walking on the highway and a man seize her, say to her, 'I will surely have intercourse with thee'; (if) she be not willing and defend herself, and he seize her by force and have intercourse with her (rape her), whether they catch him with (upon) the wife of a man, or whether at the (word of) the woman he has raped, the elders (witnesses) prosecute him, they shall put (that) man to death. There is no punishment for the woman."

13

"If the wife of a man go out from her house and visit a man where he lives, and he have intercourse with her, knowing that she is a man's wife, the man and also the woman they shall put to death."

14

"If a man have intercourse with the wife of a man either in a lodging-house (?) or on the highway, knowing that she is a man's wife, according as the man, whose wife she is, orders to be done, they shall do to the adulterer. If not knowing that she is a man's wife he have intercourse with her (rapes her), the adulterer goes free. The man shall prosecute his wife, doing to her as he likes."

15

"If a man catch a man with his wife, they shall prosecute him, they shall convict him; both of them they shall put to death. He (the husband) is not to be blamed. If the two be caught and brought before the king or before the judges, they shall prosecute him, they shall convict him. If the husband of the woman put his wife to death, he shall also put the man to death. If he cut off the nose of his wife, he shall turn the man into a eunuch; and they shall disfigure the whole of his face. But if he spare (acquit) his wife, he shall also acquit the man."

16

"If a man have relations with the wife of a man at her wish, there is no penalty for that man. The man shall lay upon the woman, his wife, the penalty he wishes. If he have intercourse with her perforce, they shall prosecute him, they shall convict him. His punishment is the same as that of the man's wife."

17

"If a man say to a man, 'They have had intercourse with thy wife,' (but) there is no evidence, they shall place bonds (set bonds); to the river they shall go."

18

If a man say to his companion, either in secret or in a quarrel, 'They have had intercourse with thy wife; I will prove it,' (and) be not able to prove it, and do not prove it, on that man they shall inflict forty blows, a month of days he shall perform the king's work, they shall mutilate him, and one talent of lead he shall pay."

21.

"If a man strike the daughter of a man and cause her to drop what is in her, they shall prosecute him, they shall convict him, two talents and thirty manas of lead he shall pay, fifty blows they shall inflict on him, one month of days he shall do the king's work."

22

"If the wife of a man, one who is not her father, or her brother, or her son, but another man, cause her to make (undertake) a journey (with him) and he swear that he did not know that she was a man's wife, two talents of lead he shall pay to the husband of the woman. If he knew that she was the wife of a man, he shall pay damages and swear, 'Verily, I did not abuse her'; and if the wife of the man swear, 'He had intercourse with me,' the man who gave damages for the man's wife

andronicus publishing company, inc.

"If the wife of a man be walking on the highway and a man seize her, may he bar, it will surely have intercourse with them; (19) and he will kill and defend himself, and he raise her by force and have intercourse with her (rape her), then they shall slay that man who (has) the wife of a man, or whether at the (gate of) the woman be the rape, the above (witnesses) protocols him; they shall put (him) man to death. There is no penalment for the woman.

"If the wife of a man go out from her house and visit a man's wife, and be have intercourse with her, knowing that she is a man's wife, the men and also the woman they shall put to death."

"If a man have intercourse with the wife of a man either in a betrothal-house (?) or on the highway, knowing that she is a man's wife, according as the man with the wife, orders to be done, they shall do to the adulterer. If not knowing that she is a man's wife, he have intercourse with her (rape her), the adulterer goes free. The man shall proceede his wife, doing to her as he likes."

"If a man catch a man with his wife, they shall prosecute him, they shall convict him; both of them they shall put to death. He (the husband) is not to be killed. If the one be caught and brought before the king or before the judges, they shall prosecute him, they shall convict him. If the husband of the wife is dead, he shall also put the man to death. If he put the man to death, he shall mutilate him and he shall fasten him upon a stake. But if he spare (accept) his wife, he shall also accept his son."

"If a man have relations with the wife of a man at her will, there is no penalty for that man. The man shall lay upon the woman, his wife, the penalty in witness. If he have intercourse with her perforce, they shall prosecute him, they shall convict him. His punishment is the same as that of the man's wife."

"If a man ~~[illegible]~~ to a man, 'They have had intercourse with thy wife,' (but) there is no evidence, they shall place (set) him (and) to the river they shall go."

"If a man ~~[illegible]~~ to a man, 'They have had intercourse with thy wife,' (but) there is no evidence with thy wife; I will prove it,' (and) he not able to prove it, and do not prove it, on that man they shall inflict forty stone, a month of days he shall perform the king's work, they shall mutilate him, and one talent of lead be shall pay."

"If a man strike the daughter of a man and cause her to drop what is in her, they shall prosecute him, they shall convict him, ten talents of money unto of lead be shall pay, fifty blows they shall inflict on him, one month of days he shall perform the king's work."

"If the wife of a man, one who is not (under-age) a journey (with him) and he never did not know that she was a man's wife, the talents of lead he shall not to the husband of the woman. If he know that she was the wife of a man, he shall not divorce her at all, he shall perform with her (rape her), the adulterer dies."

"If a man have intercourse with the betrothed wife of a man, they shall prosecute him, they shall convict him; if in the city he have intercourse with her, in the city they shall stone them to death, because the woman did not cry out, and the man his neighbour's wife humbled, he shall put away."

"If a man have intercourse with a man's betrothed wife, a young woman, who has not known a husband, and she dwell in the house of her father, and a man and she lie on the bosom and they be caught, that man shall be killed, and that woman goes free; there is no penalty in death for the woman."

"If a man betroth a wife to his son, and his son have intercourse with her, he shall bind him and put him in water."

"If a man betroth a wife to his son, and his son not have had intercourse with her, and he himself have had intercourse with her, he shall pay her half a talent of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son not have had intercourse with her, and he himself have had intercourse with her, if she be found pregnant by him, he shall pay her one talent of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son not have had intercourse with her, and he himself have had intercourse with her, if she be not found pregnant by him, he shall pay her ten talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, they shall bring them both to the city gate and there they shall convict them; he shall pay her one talent of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, they shall bring them both to the city gate and there they shall convict them; he shall pay her two talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her three talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be not found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her four talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her five talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be not found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her six talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her seven talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be not found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her eight talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her nine talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

"If a man betroth a wife to his son, and his son have had intercourse with her, and he himself have had intercourse with her, if she be not found pregnant by him, they shall bring them both to the city gate and there they shall convict them; he shall pay her ten talents of silver, and all that she brought from her father's house they shall restore to her; her husband she may take, she may not take."

shall go to the river, without bonds. If he return from the river, according as the woman's husband does to his wife they shall do to that one."

23

"If the wife of a man take a man's wife into her house and give her to a man for intercourse, and the man know that she is a man's wife, (the punishment) of one who has intercourse with a man's wife they shall impose upon him. And according as the husband of the woman does to his adulterous wife they shall do to the procuress. And if the husband of the woman do not do anything, to his adulterous wife, to the adulterer and the procuress they shall also do nothing; they shall let them go free. But if the wife of the man did not know, and the woman who took her into her house through trickery caused the man to enter in unto her, and he had intercourse with her—if on her going forth from the house she declare that there had been adultery, they shall let the woman go, she is free. The adulterer and the procuress they shall put to death. But if the woman do not admit(say) (that there had been intercourse), the man shall lay on his wife the penalty he wishes; the adulterer and the procuress they shall put to death."

24

"If the wife of a man withdraw from the presence of her husband of her own accord, (and) in the midst of the city or in a suburban garrison, where they point out a house to her, she enter an Assyrian's house, dwelling with the mistress of the house, spending the night there three or four times; the master of the house not knowing that the wife of a man was dwelling in his house, and finally that woman be caught; the master of the house whose wife of her own accord withdrew from his presence shall take his wife (home). Of the wife of the man with whom his wife was dwelling they shall cut off the (her ear(s). Her husband, if willing, may pay three talents of lead as her price, or if he wish (it to be so), they shall seize his wife. But if the master of the house knew that a man's wife was dwelling in his house with his wife, he shall pay threefold. But if he deny (it), saying, 'I did not know,' they shall go to the river. And if the man in whose house a man's wife was dwelling return from the river, threefold he shall pay. If the man whose wife of her own accord withdrew herself from his presence return from the river, he is free. The river has settled (fulfilled) everything (in connection with her (case)). And if the man whose wife withdrew of her own accord from his presence do not cut off his wife's (ear(s)), he shall take his wife back. There is no other penalty."

25

"If a woman be dwelling in the house of her father, and her husband have died, the brothers of her husband, who have not divided (the paternal estate), in case she has no son, every gift which her husband settled upon her, which is not used up, the brothers of her husband, who have not yet divided (the paternal estate), shall receive (take). For what is left they shall bring (their claim) before the gods, they shall prove (their case), they shall take the (goods). For the river or an oath (curse) they are not to be seized."

26

"If a woman be dwelling in the house of her father, and her husband have died, any gift which her husband settled upon her—if there be any sons of her husband's, they shall receive (it). If there be no sons of her husband's, she receives (it)."

27

"If a woman be dwelling in the house of her father and her husband come in, any present which her husband gave to her he may take. Against the house of her father he shall have no claim (not draw nigh)."



ondronicus publishing company, inc.

"If the wife of a man takes into her house and gives birth to a man for intercourse, and the man knows that she is a man's wife, (the punishment) of one who has intercourse with a man's wife they shall impose upon him. And according as the husband of the woman does to his adulteress wife, they shall do to the procuress. And if the husband of the woman do not do anything to his adulteress wife, to the adulteress and the procuress they shall also do nothing; they shall let them go free. But if the wife of the man did not know, and the woman who took into her house through trickery caused the man to unite [with] her and be had intercourse with her—if on her point forth from the house she declare that she has been adultery, they shall let the woman go, she is free. The adulterer and the procuress they shall put to death. But if the wife, (a not adult(ant)) (that there had been intercourse), the man might lay on his wife the penalty be washed; the adulterer and the procuress they shall not to death."

"If the wife of a man withdraw from the presence of her husband of her own accord, (and) is the midst of the city or in a suburban district, where they point out a house to her, she enter an Akkadian's house, dwelling with the mistress of the house, spending the night three times or four times; the master of the house not knowing that the wife of a man was dwelling in his house, and finally that woman be caught, the master of the house whose wife of her own accord withdrew from his presence shall take his wife (home). Of the wife of the man with whom she went shall they shall cut off the (her ear(s)). Her husband, if his wife was dwelling [with] her, may [by three talents of lead as her price, or if he wish (it) to] so), they shall make his wife. But if the master of the house know that a man's wife was dwelling in his house with his wife, he shall pay threefold. But if he say (it), saying, 'I did not know,' they shall go to the river. And if the man in whose house a man's wife was dwelling return from the river, threefold he shall pay. If the man whose wife of her own accord withdrew herself from his presence return from the river, he is free. The river has smitten (inflicted) everything (in connection with her (case)). And if the man whose wife withdrew of her own accord from his presence do not cut off his wife's (ear(s)), he shall take his wife back. There is no other penalty."

"If a woman be dwelling in the house of her father, and her husband have died, the brethren of her husband, who have not divided (the paternal estate), in case she has no son, every gift which her husband settled upon her, which is not used up, the inheritors of her husband, who have not divided (the paternal estate), shall receive (take). For what is left shall bring (their claim) before the gods, they shall prove (their case), they shall take the (goods). For the river or an oath (curse) they are not to be seized."

"If a woman be dwelling in the house of her father, and her husband have died, any gift which her husband settled upon her—if there be any sons of her husband's, they shall receive (it). If there be no sons of her husband's, she receives (it)."

"If a woman be dwelling in the house of her father and her husband gave [a present which her husband] gave to her in any tablet. Against the house of her father he shall have no claim (not draw near)."

28

"If a woman, who is a widow, enter into the house of a man, bringing her minor (?) son with her, and he grow up in the house of the one who has taken her (in marriage) but a document of his sonship (adoption) is not written, he has no share in the house of him who brought him up; he is not responsible for a debt; from the house of his parents he receives a portion according to his share (hand)."

29

"If a woman enter into the house of her husband, her dowry and anything which she brought from the house of her father, as well as that which her father-in-law gave her on her entering (her husband's house), is free to her sons. The sons of her father-in-law shall make no claim (not draw nigh), and if her husband survive her, he may give to his sons as he wishes."

30

"If a father to the house of the father-in-law of his son bring and present a gift, the woman not yet having been given to his son, and another son of his, whose wife is dwelling in the house of her father, die, the wife of his dead son, to his other son, to the house of whose (prospective) father-in-law he had presented (a gift), he shall give in marriage. If the master (father) of the girl who had received the gift be not willing to give his daughter, then the father who presented the gift, if he wishes, may take his 'bride' and give her to his son. Or, if he choose, everything that he presented, lead, silver, gold, which are not food, he may take back--as to the principal, for that which is food he shall bring no claim (not draw nigh)."

31

"If a man to the house of his father-in-law have presented a present, and his wife die, his father-in-law having (other) daughters, if the father-in-law be willing, another daughter of his father-in-law in place of his dead wife he may take. Or if he wish, the silver which he gave he may take back. But again, grain or sheep or anything else which is food, they need not give back to him. The silver only he may receive."

32

"If a woman be dwelling in the house of her father, but has been given to her husband, whether she has been taken to the house of her father-in-law or whether she has not been taken, debt(s), misdemeanor(s), and crime(s) of her husband she bears."

33

"If a woman be dwelling in the house of her father, and her husband die, and she have (a) son(s)....., then her (father) to her father-in-law shall give her in marriage. If her husband and her father-in-law be (both) dead, and she have no sons, she is a widow; where she wishes she may go."

34

"If a man take a widow (in marriage), not drawing up a contract and she dwell in his house two years, she is a wife, she need not go out."

35

"If a woman, who is a widow, enter into the house of a man, whatsoever she brings with her--all is her husband's. But if a man enter in to a woman, whatsoever he brings--all is the woman's."

36

"If a woman be dwelling in the house of her father, although her husband had caused her to spend the night in (his) house, and her husband have (since) gone to the 'field,' and have left her neither oil, nor wool, nor clothes, nor food, nor anything else, and have not sent her any goods

academic publishing company, inc.

"If a woman who is a widow, enter into the house of a man, bring her (her minor (?) son with her, and be free to go to the house of the one she has taken for (is entitled) but a dowagerie of his monetary (adoption) is not written, he has no share in the house of the one brought in to be responsible for a debt from the house of his parents to receive a portion according to his share (part)."

"If a woman enter into the house of her husband, her dowry and property which she brought from the house of her father, as well as that which her father-in-law gave her as her morning (her husband's house), is free to her sons. The sons of her father-in-law shall make no claim (not draw right), and if her husband survive her, he may give to the sons be written."

"If a father to the house of the father-in-law of his son bring and presents a gift, the woman not yet having been given to his son, and another son of his, whose wife is dwelling in the house of her father, die, the wife of his dead son, to his other son, to the house of whose (possession) father-in-law be not (because is gift), he shall give it privately. If the master (father) of the girl who had received the gift be not willing to give his daughter, then the father who presented the gift, he shall take his [wife] and give not to his [son, or, if he choose, everything that be presented, land, silver, gold, which are not land, he may take back of the betrothal], for that which is food he shall bring no claim (not draw nigh)."

"If a man to the house of his father-in-law have presented a present, and his wife die, his father-in-law having (other) daughter, if the father-in-law be willing, another daughter of his father-in-law in place of his [and wife he may take]. Or if he wish, the silver which he gave to may have been. But goods, grain or sheep or anything else which is food, they need not give back to him. The silver only is to receive."

"If a woman be dwelling in the house of her father, but her heart (mind) be inclined to go to the house of her father-in-law or neighbor who has not been taken, dower(s), miscarriage(s), and estate(s) of the husband she bears."

"If a woman be dwelling in the house of her father, and her husband die, and she bore (a) son(s)....., then her (father) to her father-in-law shall give her in marriage. If for husband and her father-in-law she may go."

"If a man take a widow (in marriage), not drawing up a contract and she dwell in his house two years, she is a wife, she need not go out."

"If a woman, who is a widow, enter into the house of a man, [later-ever she bring with her--all is for husband's. But if a man enter in to a woman, whosoever be bring--all is the woman's."

"If a woman be dwelling in the house of her father, although husband and demand her to spend the night [his] house, and her husband have (since) gone to the [city], and have left her neither oil, nor wool, nor clothes, nor food, nor anything else, and have not sent her word

out of 'the field'—this woman shall wait for her husband five years, she shall not live with (another) husband. If she have sons, they shall be hired out and eat. The woman shall wait for her husband, shall not dwell with (another) husband. If she have no sons, she shall wait for her husband five years; on the arrival of the sixth year she may dwell with the husband of her choice. Her husband on coming (back) shall have no claim on her (shall not draw nigh); she is free to her later husband. If he prove on (his) coming (back) that for a period of five years he delayed, not having drawn near of his own accord, (because) an overseer (?) had seized him and he had run away, or as a rebel he had been seized and (so) had delayed, a woman he shall give in place of his wife, and his wife he may take back. Or if the king send him to another country, and he delay for a period of five years, his wife shall wait for him, shall not dwell with (another) husband. And if before the five years (are up) she dwell with (another) husband, and bear (children), her husband, on coming (back), because she had not waited the full time, but had been given in marriage to that one, her children he may take."

37

"If a man divorce his wife, if he wish, he may give her something; if he do not wish, he need not give her anything. Empty (in her emptiness) she shall go out."

38

"If a woman be dwelling in the house of her father, and her husband divorce her, the presents which that one settled upon her he may take. On the bride price which he brought he shall have no claim (not draw nigh). It is free to the woman."

39

"If a man give someone not his daughter to a husband, if earlier her father were in debt and she were allowed to dwell (in his house) as a pledge (one sent), and the earlier creditor come and make good to the one who gave away the woman the price of the woman, if he had nothing to give, he shall seize the one who gave her away. And if she get well from evil, to him who made her well she is free. And if (for) the man who married the woman they cause a document to be written, or else bring claims, against him, he shall make good the price of the woman, and the one who gave her away (free of obligation)."

40

"If the wives of a man, or the daughters of a man, or his women go out into the street, their heads (are to be veiled). The daughters of a man. . . . . .with a. . . . .garment, or with. . . . . .garments, are to be veiled. (as for widows) their heads. . . . . .with (. . . . . garments) or with (. . . . . .garments). . . . . .they are to be veiled (veil themselves). When (they go out) into the streets, and go about, they shall veil themselves. The concubine (captive woman), who apart from her mistress goes into the streets, is to be veiled. The (sacred) prostitute, whom a husband has married, is to be veiled in the streets. But one whom a husband has not married is to have her head uncovered ('open') in the streets; she is not to veil herself. The harlot is not to veil herself, her head is to be uncovered. The one who sees a veiled harlot is to seize her, secure witnesses, (and) bring her for the judgment of the palace. Her ornaments they shall not seize. The one who seized her shall take her garments. Fifty blows they shall inflict on her. Bitumen they shall pour on her head. But if a man see a veiled harlot and let her go, (and) do not bring her for the judgment of the palace, on that man they shall inflict fifty blows; the one who caused his apprehension shall take his garment. His ears they shall pierce, and string (them) with a string, and bind (them) on his back. A month of days he shall do the king's work. Maidservants are not to veil themselves. The one who sees a veiled maidservant shall seize her, for the judgment of the palace he shall bring her; they shall cut off her ears. The one who seized her shall take her garments. If a man see a veiled

andronicus publishing company, inc.

maidservant (and) let her go, and do not seize her, do not bring her for the judgment of the palace, they shall prosecute him; they shall convict him; fifty blows they shall inflict upon him; his ears they shall pierce; they shall string (them) with a string; they shall bind (them) to his back. The one who caused his apprehension shall take his garments. A month of days he shall do the king's work."

41

"If a man veil (would veil) his concubine (captive woman), five or six of his companions he shall cause to sit down; before them he shall veil her. He shall say, 'She is my wife.' She is his wife. But the captive woman (who was not veiled) in front of the men, whose husband did not say, 'She is my wife,' she is not a wife. She is (remains) a captive woman. If the man die, not having sons by his veiled wife, the sons of captive women shall be their sons, they shall receive a portion (of the paternal estate)."

42

"If a man on the day of anointing (?) pour out oil on the head of the daughter of a man, or at the (betrothal) feast bring presents, they shall make no return."

43

"If a man (pour) oil on the head (of a girl) or bring presents, and the son to whom he (they) had engaged (her to be his) wife die or run away, he shall give (her) to the one he chooses of his remaining sons, from the oldest son to the youngest son whose years are ten (who has reached his tenth year). If the father die and the son to whom he (they) had engaged (her to be his) wife also die, (if) there be a son of the dead son whose years are ten, he shall marry (her). If after a period of ten years the grandsons be (still) minors, the father of the girl may give his daughter to whomever he chooses, and if he wish, he may take the proper (mutual) return (of gifts). If there were no sons (besides the one who died or ran away), whatever he received, (such as) jewels (stones) or anything which is not food, he shall return as to principal; but that which is food he need not return."

44

"If an Assyrian man or an Assyrian woman who is dwelling in the house of a man as a pledge, to the extent of his value, (or) has been taken for the full price, be agreeable, he (the master of the house) may strike him, pull (his hair), or pierce his ear."

45

"If a woman be given (in marriage), and an enemy seize her husband, and she have no father-in-law or son, two years she shall wait for her husband. During these (two) years, if she have nothing to eat she shall go and declare (it). She (shall be) a palace servant. He (the king (?) (in (of) her) he shall give her to eat. His work she shall perform. A . . . . . .and of the dependents is she. . . . . .He shall give her to eat. . . . . .And (or). . . . . .field and house. . . . . .she shall go (and say), 'There is no food.' The judges shall then ask the mayor of the city (and) the elders whether they cultivated the field (land) in that city, field and house for her support for two years they shall prepare, they shall give to her. She shall live (there) and they shall write her document. Two years she shall complete, (and then) she may live with the husband of her choice. They shall write her document (which is to be to the effect) that she is a widow. If later her missing husband return to (his) land, his wife who has been married by an outsider he may take (back). He may not draw near (lay claim) to the sons (children) which she has born to her later husband. The later husband shall take (these). The field and house, which (had served) as her support, (and which) had been given to the other man (lit., 'outside') at the full price; if he do not enter the garrison of the king, (at the price) they were sold he shall give back and (the other) shall take (them).

...leagues publishing company, inc.

41

"If a man will (would well) his commission (position, office, or
six of his companions he shall cease to sit down before he shall
well him. He shall not, [the is or were]. He is his wife. But the
position would not not valiant) in front of the men. Have landed his
not any, [he is or not]' who is not a wife'. The [remains] a captive
woman. If the man die, not marry save by his valiant wife, the sons of
captive women shall be their wives, they shall receive a portion (of the
personal estate)."

42

"If a man or the boy of reaching (1) pour out all on the head of
the daughter of a man, or the (betrothed) feast bring present, they
shall come to stay."

43

"If a man (pour) all on the head (of a girl) or bring presents, and
the son to whom he (they) had engaged (her to be his) wife or the man,
he shall give (her) to the son he chooses of his remaining sons. (He
object can or to the purpose no whose sons are the (the two remain his
town size). If the father die and the son to whom be (they) had engaged
(her to be his) wife also die, (he) choose to a one of the kind one whose
sons are ten, he shall marry (her). If after a period of ten years the
grandsons be (still) absent, the father of the girl may give his daughter
to whosever he chooses, and it be wife, to any into the proper (mutual)
return (of gifts). If there are no sons (besides the one who died or
ran away), whatever is received, (such as) jewels (stones) or anything
which is not food, he shall return as to maintain; but when is in-
food to need not return."

44

"If an Assyrian run or an Assyrian woman go in (utility in the
house of a man as a slave), in the estate of his wife, (or) and been
taken for the (his) wife, to represent, to (the) daughter of the house) may
strike him, pull (his hair), or pierce his ear."

45

"If a woman be given (in marriage), and no sons nor her husband,
and she have an Entor-la-lir or two, two years she shall wait for
husband. During these (two) years, if she have nothing to eat she shall
go and declare (it). She (shall be) a palace servant. He (the king (1)
(is (or) her) no shall give her in not. His work she shall perform. A
. . . . . of the dependents is she. . . . . he shall
. . . . . give her to eat, . . . . . and (or). . . . . afford and house.
. . . . . who shall go (not any), There is no food, The widow shall
. . . . . them ask the owner of the city (and) the elders whether they maintained
. . . . . the field (land) in that city, field and house for her support for two
. . . . . years the shall provide, stay shall give to her. She shall live (there)
and they shall write her document. The order she shall cohabit, (and
then) she may live with husband of her choice. They shall write her
document (which is to be the effect) that she is a widow. If later
by palace husband return to (his) land, his wife she has been married
by no outsider be any duty (bond). He may not time near (by alike) to
the sons (children) which are her born to her later husband. He later
husband shall take (them). The (old) old house, which (had served) as
her support, and (his) had sons given to the other son (its, [notable])
of the full price. If he do not offer the purchase of the (or the
price) they were sold he shall give her and (the other) shall take (them).

But if he do not return, but die in a foreign land, his (the king's) field and his house, when (ever) the king has given (them), he gives."

46

"If a woman whose husband is dead on the death of her husband do not go out from her house, if her husband did not leave (write) her anything, she shall dwell in the house of one of her sons (lit., the house of her sons where she wishes). The sons of her husband shall support her; her food and her drink, as (for) a fiancee whom they are courting (love), they shall agree (to provide) for her. If she be a second (later) wife, and have no sons of her own, with one (of her husband's sons) she shall live (dwell) and the group (according to their group) shall support her. If she have sons of her own, and the sons (of the) former (marriage) (be not willing) to support her), in the house of (one) of her own sons, where she chooses, she may dwell. Her own sons shall support her, and (she) shall do their work. But if there be one among the sons of her husband who marries her, (and is willing to support her), (the other sons) need (not) support her."

47

"If a man or a woman practice sorcery, and they be caught with it in their hands, they shall prosecute them, they shall convict them. The practicer of magic they shall put to death. The man who saw the practice of magic (or) hears (of it) from the mouth of one who saw the magic (practiced) and who said to him, 'I saw (it)'—the one who heard (of it) shall go and report to the king. If the one who saw (it), who reported to the king, deny (it), he shall declare before the Gudbanda, of Shamash, 'Verily, he has told me,' (and) he goes free. The one who saw (it), who reported (it), and then denied it, the king, if he wish, shall question him, and he shall examine his past career. The sorcerer, on the day they bring him (to trial), shall make the man speak out, and that one shall say: 'The oath which before the king and his son thou didst take will not free you from it; according to the word of the document to which before the king and his son thou didst swear, thou has sworn.'"

48

"If a man for the daughter of his debtor living in his house because of the debt ask her father, he shall give her to a husband. If her father be not willing, he need not give (her). If her father be dead, he shall ask one of her brothers; then that one shall speak to her (other) brothers, (and) if a brother say, 'I will redeem my sister within a month of days,' if within a month of days he do not redeem (her), the creditor may free her, if he wish, and give her to a husband. . . . . When (as) a brother. . . . . And if she die a harlot because her brother speak (thus), her sons like the sons of a brother, the portion of one brother among themselves shall divide."

49

"If a man strike a woman and cause her to drop what is in her (miscarriage). . . . . the wife of a man. . . . . and. . . . . he has done, according to that which was in her, he shall make restitution for life. And if that woman die, they shall put the man to death; according to that which was in her, he shall make restitution with a living being. And if the husband of that woman have no son, his wife they struck and that which is in her she dropped, according to that which was in her they shall kill the one who smote (her). If that which was in her were small, he shall make restitution with a 'life.'"

50

"If a man strike the wife of a man, in her first stage of pregnancy, and cause her to drop that which is in her, it is a crime; two talents of lead he shall pay."

academicus publishing company, inc.

"If a man strike the wife of a man, in her first stage of pregnancy, and cause her to drop that which is in her, he shall pay [illegible] shall be slain."

"If a man strike a woman and cause her to drop what is in her [illegible] . . . . . [illegible] . . . . . and . . . . . he shall pay ten shekels of silver. And if the woman have no son, his wife shall be taken and [illegible] . . . . . [illegible] . . . . . [illegible] . . . . .

51

"If a man strike a harlot and cause her to drop that which is in her, blows for blows they shall lay upon him; he shall make restitution for a life."

52

"If a woman of her own accord drop that which is in her, they shall prosecute her, they shall convict her; they shall crucify her; they shall not bury her. If she die from dropping that which was in her, they shall crucify her. They shall not bury her. If because she dropped what was in her they hide that woman. . . . . .they said. . . . . ."

54

"If a man (seize) a virgin who is dwelling in the house of her father, whose husband have not (yet) been chosen, whose . . . . . have not been opened, who have not been taken (in marriage), against the house of whose father they have no claims (if) the man, either in the city, or in the country, or at night in the street, or in a 'warehouse,' or at a city festival—the man by means of force (?) seize the virgin, and make her pregnant, the father of the virgin shall seize the wife of the adulterer and give her to be raped, he shall not return her to her husband, he shall take her. The father shall give his ravished daughter to the one who raped her as a wife. If he have no wife, the ravisher shall pay to her father threefold the price of a virgin in silver. Her ravisher shall marry her, he shall not abuse (?) her. If the father be not willing, he shall take threefold (the price of) a virgin in silver, and give his daughter to whom he pleases."

55

"If a virgin of her own accord give herself to a man, the man shall take oath, against his wife they shall not draw nigh. Threefold the price of a virgin the ravisher shall pay. The father shall do with his daughter what he pleases."

56

"Whether there be striking or (unlawful seizure) of the wife of a man, that which is written on the tablet (is to be paid, carried out)."

57

"In (the case) of every crime (for which there is the penalty) of the cutting-off of (ear or nose?), or ruining of (reputation or condition), as it (is written it shall be carried out)."

58

"Except (in case) of the crime (concerning the wife of a man), what is in the tablet (need not be carried out). The man may strike his wife, pull (her hair), her ear he may bruise or pierce. He commits no misdeed (thereby). (The date.)"

PART III

1

". . . . . .Their owner. . . . . .and if the buyer (say), '(The male or female slave) which I ransomed (is dead?),' (the male slave at the rate of x) talents of lead, the female slave at the rate of four talents of lead, (he shall, , . . , . . .). . . .and if the collector (of slaves) say,'. . . . . .,' before God he shall swear, and whatever in . . . . . .he. . . . . .he shall receive. . . . . ."

andronicus publishing company, inc.

PART III

2

"(If a man) sell (the son of a man) or the daughter of a man, who on account of money (matters) or as (a pledge) was dwelling (in his house), for silver (money) to another man, (or if) he sell (any animal) which was dwelling in his house, (they shall convict him), he shall lose his money; and he shall give his minor to the owner of the property; x lashes they shall inflict upon him, twenty days he shall do the king's work."

3

"(If a man) sell (the son of a man) or the daughter of a man, who on account of money (matters as a pledge) (was dwelling in his house) for silver into another (foreign) land, (they shall prosecute him), they shall convict him, he shall lose his money; (his minor son) he shall give to the owner of the property; (x lashes) they shall inflict upon him, forty days he shall do the king's work. (And if the one be sold) die in the other (foreign) land, (he shall. . . . . But if he were) not an Assyrian man or woman. . . . . .who bought (him) may sell (him) to another (foreign) land."

andronicus publishing company, inc.

# THE HITTITE CODE

dronicus publishing company, inc.

# THE HITTITE CODE

## IF A MAN
## ASSAULT AND BATTERY

1. "If anyone slay a man or a woman in a quarrel, he shall (bring this one). He shall also give four persons, either men or women, he shall let (them) go (?) to his (his family's) home (?)."

2. "If anyone slay a male or female slave in a quarrel, he shall bring this one and give (two persons), either men or women, he shall let (them) go (?) to his (the owner's) home (?)."

3. "If anyone smite a freeman or woman and this one die, (only) his hand doing evil, he shall bring this one and give two persons, he shall let (them) go (?) to his home (?)."

4. "If anyone smite a male or female slave, (only) his hand doing evil, he shall bring this one also and give one person, he shall let (him or her) go (?) to his (the owner's) home (?)."

ANOTHER REDACTION OF 4 ( 3 AND 4?), AFTER "EVIL:"

(. . . .) "But if it be a woman or (?) a female slave, he shall give two pounds of silver. (Other combinations also are possible, as: But if it be a woman, he shall give a female slave and two pounds of silver.)"

5. "If anyone slay a merchant of Hatti, he shall give one and a half (or one hundred?) pounds of silver, he shall let (it) go (?) to his (his family's) home (?). If (it happen in the land of Luia or in the land of Pala, he shall give one and a half (or one hundred?) pounds of silver and compensate his property. If (it happen) in the land of Hatti, then he shall bring that merchant."

ANOTHER REDACTION OF 5: "If anyone slay (a merchant of Hatti) for property in (this land?), he shall give (. . pounds of silver) and compensate for the property threefold. But if anyone do not retain the property and slay him in a quarrel, he shall give six pounds of silver. If (only) his hand do evil, he shall give two pounds of silver."

6. "If one, man or woman, die in this or that village, he in whose circuit he dies shall cut off one hundred rods of field, and he (the heir) may take it."

ANOTHER REDACTION OF 6: "If a man die in another field and ground, if it be a freeman, he shall give field, ground, house, and one pound, twenty half-shekels of silver; if it be a woman, he shall give three pounds of silver. But if there be no field and ground, in the place of the other (shall be put) this way three double-leagues, that way three double-leagues, and whatever village is met (or determined by an oracle?) therein, he (the heir) may take these (men for compensation). If there be no village, he shall go away empty."

7. "If anyone blind a freeman or knock out his teeth, formerly they would give one pound of silver, now he shall give twenty half-shekels of silver, he shall let (it) go (?) to his home (?)."

andronicus publishing company, inc.

(Another redaction is given after 8.)

8. "If anyone blind a male or female slave or knock out his (or her) teeth, he shall give ten half-shekels of silver, he shall let (it) go (?) to his home (?)."

ANOTHER REDACTION OF SEC'S. 7 AND 8, IN THREE SECTIONS:

"If anyone blind a freeman (sec. 8: a slave) in a quarrel, he shall give one pound (sec. 8: twenty half-shekels) of silver. If (only) the hand do evil, he shall give twenty (sec. 8: ten) half-shekels of silver."

"If anyone knock out a freeman's teeth, if he knock out two teeth or three teeth, he shall give twelve half-shekels of silver. If it be a slave, he shall give six half-shekels of silver."

9. "If anyone injure a man's head, formerly they would give six half-shekels of silver; the injured man was to take three half-shekels of silver, for the palace they would take three half-shekels of silver. Now the king has remitted the palace's (dues); so only the injured man may take three half-shekels of silver."

10. "If anyone injure a man so that he cause him suffering, he shall (?) take care (?) of him. Yet he shall give him a man in his place, who shall work for him in his house until he recovers. But if (or when) he recover, he shall give him six (var., ten) half-shekels of silver. And to the physician this one shall also give the fee (another version adds, three half-shekels of silver, but if it be a slave, two half-shekels)."

11. "If anyone break a freeman's hand or foot, he shall give him twenty (one tablet, six) half-shekels of silver, he shall let it go (?) to his home (?)."

(Another redaction is given after sec. 12.)

12. "If anyone break the hand or the foot of a male or female slave, he shall give ten half-shekels of silver, he shall let it go (?) to his home (?)."

ANOTHER VERSION OF SEC'S. 11 AND 12: "If anyone breaks a freeman's (sec. 12: a slave's) hand or foot and if he (this one) remain crippled (?), he shall give him twenty (sec. 12: ten) half-shekels of silver; but if he be not crippled (?), he shall give him ten (sec. 12: five) half-shekels of silver."

13. "If anyone cut off (?) the nose of a freeman, he shall give one pound (another version, thirty pounds) of silver, he shall let it go (?) to his home (?)."

14. "If anyone cut off (?) the nose of a male or female slave, he shall give three (?) half-shekels (another redaction, fifteen pounds) of silver, he shall let it go (?) to his home (?)."

15. "If anyone tear the ear of a freeman, he shall give twelve half-shekels of silver, he shall let it go (?) to his home (?)."

16. "If anyone tear the ear of a male or female slave, he shall give three (another redaction, six) half-shekels of silver."

17. "If anyone cause a freewoman to miscarry, if it be the tenth month, he shall give ten half-shekels of silver, if it be the fifth

(sixth?) month, he shall give five half-shekels of silver (some variants, without diatinguishing the months, twenty-half-shekels of silver), he shall let it go (?) to her home (?)."

18. "If anyone cause a female slave to miscarry, if it be the tenth month, he shall give five half-shekels of silver (some variants, without the month, ten half-shekels of silver)."

## OWNERSHIP OF SLAVES

19. "If any man of (from) Luia steal a man or a woman of (from) Hattusas and lead him to the land of Arzawa (var., Luia) (and) his master discover (?) him, he shall bring his very house (hold?). (One of the two tablets begins a new section here.) If at Hattusas itself (?) any Hittite steal a Luia man and lead him to the land of Luia: formerly they would give twelve persons; now he shall give six persons, he shall let (them) go (?) to his home (?)."

20. "If any man of Hatti steal a Hittite slave and lead him hither to the land of Hatti, (and) his master discover (?) him, he shall give him twelve half-shekels of silver, he shall let it go (?) to his home (?)."

21. "If anyone steal a slave of a Luyite from the land of Luia and lead him hither to the land of Hatti, (and) his master discover (?) him, he (the master) shall take his slave only, without compensation."

22. "If a slave run away and anyone lead him back, if he seize him near, he (the owner) shall give him shoes; if on this side of the river, he shall give him two half-shekels of silver; if on that side of the river, he shall give him three half-shekels of silver."

23. "If a slave run away and come to the land of Luia to him who leads him back he (the owner) shall give six half-shekels of silver. If the slave run away and come to a hostile land, the one who succeeds in leading him back shall take him."

24. "If a male or female slave run away, he at whose hearth his master finds him (or her) shall give as a man's wages (. . pounds of silver) a year (the other tablet, twelve half-shekels of silver a month, but as a woman's wages he shall give fifty (forty?) half-shekels of silver a (year) (the other tablet, six half-shekels of silver a month)."

## SANITATION

25. "If a man put filth in a cistern (?) or a well (pond?), formerly they would give (six) half-shekels of silver: he who put filth was to give three half-shekels of silver (to the owner of the village, and) into (lit., into the yard? (of) the palace) they would take three half-shekels of silver. Now the king has remitted the (share) of the palace. He who put filth, this very one shall give three half-shekels of silver, he shall let it go (?) to his home (?)."

## LAWS OF MARRIAGE

26. "(Traces only.)"

27. "If a man take (a woman for) his wife and lead her (into his house) (and) put (or he may put?) down (?) (some) of (?) her patrimony there, if the woman die, (and) they (or they may?) burn the property of this man, the man may take from (?) her patrimony. If she die at her father's house and he (the father?) (have) sons (or children), for his son the man dare not take her patrimony."

OWNERSHIP OF SLAVES

19. "If any man of (from) Dula steal a man or a woman of (from) Nettuno and lead him to the land of Arnoma (wor., Luda) (and) his master discover (1) him, he shall bring his very bones (bolg.). (One of the two fables begins a new section here.) If at Nettuno (theft) (of any kind) steal a lone man and lead him to the land of Solat (formerly they would give twelve persons) now he shall give six persons, he shall let (them) go (1) to his home (1)."

20. "If any man of Rutil steal a Nisitio slave and lead him either to the land of Rutil, (and) his master discover (1) him, he shall bring him twelve half-shekels of silver, he shall let it go (1) to his home (1)."

21. "If anyone steal a slave or a Jaqite from the land of Isole and lead him either to the land of Rutil, (and) his master discover (1) him, he (the owner) shall take his slave only, without compensation."

22. "If a slave run away and anyone lead him back, if he enter his door, he (the owner) shall give him eight (or six ?) half-shekels of silver; if on this side of the river, he shall give him three half-shekels of silver."

23. "If a slave run away and come to the land of Isola to his master (the owner) shall give six half-shekels of silver. If the slave [illegible] and come to a hostile land, the one who succeeds in leading his [illegible] into slavery."

24. "If a male or female slave run away, he shall search his master (or her) shall give to a man's [illegible] pounds of silver) a year (the other tablet, twelve half-shekels of silver a month, but on [illegible] wages he shall give fifty (forty?) half-shekels of silver a (year) (the other tablet, six half-shekels of silver a month)."

DEBITATION

25. "If a man put fifth in a cleaven (1) or a wall (pond), formerly they would give (six) half-shekels of silver; he who put fifth due to give three half-shekels of silver (to the owner of the village, and) into (his) land the yard (or) the (place) they would take three half-shekels of silver, Ron the King has ventilated the (share) of the prince. He who put fifth, this very one shall give three half-shekels of silver, he shall let it go (1) to his home (1)."

LAWS OF MARRIAGE

26. "(Lacuna only)"

27. "If a man take (a woman for) his wife and lead her into his house, (and) put for he may put) down (1) (some) of (1) her patrimony above, if the woman die, (and) they (or they may) have the property of this man, the man may take from (1) her patrimony. If she do not [illegible] house and he (the husband) (maybe) some (or children), for his son the one dare [illegible] her patrimony."

28. "If a daughter be betrothed to a man and another elope with her and elope with the bride price too, whatever the first man's (bride price was) (var., whatever the first man (paid), then he (the other man) shall compensate him (the first man); father and mother do not compensate. If father and mother give her to the other man, father and mother shall compensate. If father and mother refuse (it or her?), they shall (may?) separate her from him. (For this sentence another text reads in a new section, If father and mother have no property, they shall (may) separate her from him who eloped with her.)"

29. "If a daughter be bound to a man and he convey the bride price to her, and afterward father and mother oppose this, they may separate her from the man, but they (one text, he, i.e., the father) shall compensate double (another text, thrice) the price."

30. "If the man have not yet taken the daughter and refuse her, he however forfeits the bride price that he conveyed."

31. "If a free man and a female slave be fond of each other (?) and come together and he take her for his wife and they set up house and get children, and afterward they either become hostile or come to close quarters (?), and they divide the house between them, the man shall take the children, (only) one child the woman shall take."

32. "If a slave take a woman as his wife, their case is the same. (Another tablet adjudges the maj(ority of children to the wife) and one child to (the slave).)"

33. "If a slave take a female slave, their case is the same, (Another tablet adjudges the majority (of children to the female slave) and one child to the slave.)"

34. "If a slave convey the bride price to a woman and take her for his wife, nobody dare surrender her (to slavery)."

35. "If an administrator (?) or a shepherd elope with a free woman (and) do not convey the bride price, she becomes a slave for three years."

36. "If a slave convey the bride price to a free son and take him as husband (for his daughter), nobody dare surrender him (to slavery)."

## UNPUNISHED SLAYING

37. "If anyone elope with a woman, but afterward a rescuer come to them (var., rescuers come in), if two men or three men die, there is no compensation: 'Thou hast turned into a wolf' (or, said to the rescuing father or brother, 'Thou hast become a wolf's prey'?)."

38. "If men be seized (and brought) into the court of justice, and any rescuer come to them, and then they rage at the wood of the lock (instead of this last clause another tablet reads, if the master of the court. (.).), and someone smite the rescuer, and he die, there shall be no compensation."

## HIRING FOR THE CAMPAIGN

42. "If anyone hire a man, and he (this one) go into the campaign and die, if the hire has been given, he need not compensate. If his hire have not been given, he shall give one person. And as his hire he shall give twelve half-shekels of silver, and as the hire of a woman he shall give six half-shekels of silver."

28. "If a daughter is betrothed to a man and another slave with her and slave with the bride price too, whatever the first man's (bride price was). Whatever the first man (paid), that he (the other man) shall compensate him (the first man); father and mother do not compensate. If father and mother give her to the other man, father and mother shall compensate. If father and mother refuse (it or her), they shall (may) separate but free him. (For this sentence another text reads in a new section, If father and mother have no property, they shall (may) separate her from him who slaved with her.)"

29. "If a daughter is bound to a man and be ready the bride price to her, and afterward father and mother oppose this, they may separate her from the man, but they (one text, he, i.e., the father) shall compensate double (another text, thrice) the price."

30. "If the man have not yet taken the daughter and refuse her, however forfeits the bride price that he conveyed."

31. "If a free man and a female slave be found of each other (?) and come together and be take her for his wife and they set up house and get children, and afterward they either become hostile or come to close quarters (?), and they divide the house between them...the man shall take the children, (only) one child the woman shall take."

32. "If a slave take a woman as his wife, their case is the same. (Another tablet adjudges the majority of children to the wife) and one child to (the slave)."

33. "If a slave take a female slave, their case is the same. (Another tablet adjudges the majority (or children to the female slave) and one child to the slave)."

34. "If a slave convey the bride price to a woman and take her for his wife, nobody dare surrender her (to slavery)."

35. "If an administrator (?) or a shepherd slope with a free woman (and) do not convey the bride price, she become a slave for three years."

36. "If a slave convey the bride price to a free son and take his as husband (for his daughter), nobody dare surrender him (to slavery)."

## UNFOUNDED SLAVING

37. "If anyone slope with a woman, but afterward a receiver come to them (var., receivers come to), if two men or three men die, there is no compensation. Then best turned into a wolf." (or, said to the receiver father of brother, "Then best become a wolf'a prey.")."

38. "If man be seized (and brought) into the court of justice, and any receiver come to them, and they rage at the word of the lord (tavern), and this last climax another tablet reads, if the master of the court, and someone seize the receiver, and he die, there shall be no compensation."

## HIRING FOR THE CAMPAIGN

42. "If anyone hire a man, and he (this one) go into the campaign and die, if the hire has been given, he need not compensate. If his hire have not been given, he shall give the price." And as his hire give twelve half-shekels of silver, and as the hire of a woman he shall give six half-shekels of silver."

## PUSHING INTO THE RIVER OR INTO THE FIRE

43. "If a man usually ford the river with his cattle (var., his ox) and another push (?) him and seize the tail of the ox, then he ford the river, and the river take the owner of the ox down (?), (one tablet adds, but whose pushed (?) him), they (the family?; the other tablet, he—the heir?) shall take that one (to care for them; or it—the river —shall take that one?)."

44. A. "If anyone throw a man into the fire and this one die, he shall give him (the father) again a son."

## MAGICAL CONTAMINATION

44 B. "(In one version a new section.) If anyone purify (ritually, perhaps, also exercise) a man, and put down (?) the remainders (?) deliberately (?), if he put it down (?) (var., throw it) on anyone's field or yard (?home?), (it is) enchantment (and falls under) the judgment of the king."

ANOTHER REDACTION OF THIS? OR A NEW SECTION BETWEEN SEC'S. 44B AND 45: "(. . . . ,) then he shall purify him (or it) again. And if something be hostile (or evil) to the house, he shall purify him (or possibly it) again, as before; and everything of his which disappears (is spoiled? perishes?; or whatever of his disappears—or the like—meanwhile?), he shall compensate it once."

## FINDINGS

45. "If anyone find vessels, he shall return (or and return) them to the owner; he (the owner) shall reward this one. If he do not give it, he becomes a thief."

ANOTHER REDACTION: "If anyone find vessels or ox, sheep, horse, (or) ass, he shall return (or and return) it to its owner; he (the owner) shall reward him (?). If he do not find its owner, show it to witnesses, but later its owner find it, he shall deliver to him in good condition what had disappear (less probably, what is held—viz., by him). But if he do not show it to witnesses and later its owner find it, he becomes a thief, he shall replace it threefold."

## LAND TENURE

46. "If anyone hold fields as tenancy and as heritage (i.e., as a kind of entail) in a village, if the fields be all given to him, he shall render the impost. If few fields be given to him (probably by his brothers), he need not do the impost, but they shall render it out of his paternal house. If he appropriate the fields of an owner of a heritage by usurping (?), (var., If the field and ground of an owner of a heritage fell vacant), or the men of the village give him the fields (var., field and ground), then he shall render the impost."

47. "If anyone hold fields as a present of the king, he shall not render the impost. "The king takes the bread from the table and gives it to him.""

"If anyone buy all the fields of a soldier, he shall render the impost. And if he buy (only) several (? lit., much) fields, he shall not render the impost. But if he appropriate the fields by usurping (?), or the men of the village give it to him, he shall render the impost."

VARIANT FOR SEC. 47 (THREE SECTIONS): "If anyone hold field and ground as a present of the king, he shall perform the impost. But if the king free him, he need not do the impost."

"If anyone buy the whole field and ground of a soldier, but the (primary) occupant of the field and ground disappear, what tenancy duties the king laid on him (or took from him, or as to the buyer lay on him, or take from him) he shall perform these. But if the occupant of the field and ground be alive, or there be a family of the occupant of the field and ground, either in this country or in another country, he shall not perform tenancy duties."

(Follows sec. 46, and thereupon:) "If anyone hold field and ground as a present of the king, yet he shall do as impost the impost on the fields; if the palace (lit., without a subject case, out of the palace) free him, he need not render the impost. If anyone buy the whole field of a soldier, they shall ask the king, and he shall render that impost which the king states. If he buy some (?) fields, he need not render the impost. If the field and ground fell vacant, or the men of the village give it to him, he shall do the impost."

48. "A captive renders the impost: With the captive nobody dare do business; nobody dare buy his son, his field, his vineyard. He who does business with the captive shall forego the business; (var. adds, but) the captive shall take back what he has disposed of."

49. "If a captive steal, there is no compensation (var., they shall not impose upon him ). . . . .)). (If there) might (be a corpo)ration (?), this corporation (?) of his shall compensate. I(f) they did (not) give (back) the theft every time, they all would do wrong and become thieves; this one would seize that one, and that one would seize this one; they would throw the king's pennant (?)."

50. "A high priest (?) who is mighty (?dwells?) at Nerikka, and at Arinna, and at Ziplanda, a priest in every town (or (who dwells) at every village?), their houses are free and their coheirs shall render the impost; if he go to Arinna (for the time) of one (?) month, and the flagstaff (? liberty-pole? or the like) of each of them (?) be (or then the. . . . shall be) shown (?) at his gate (?), he is f(ree)."

51. "He who formerly had(d become) a weaver at Arinna (was free) (or is nothing missing?), also his house was free, his partners, (coheirs?) and his people were free. Now only his house is free; his partners and his people render tenancy duties and impost. Also at Zippalanda it is just the same."

52. "(On one tablet no new section.) The slave of the stonehouse, the slave of a son of the king, possessors (or and the possessor?) of habitations (?), who hold fields among soldiers, shall render the impost."

## OTHER LAWS AGAINST THEFT

93. "If they seize a free man at a storehouse (, gate?), before he has gone in, he shall give twelve half-shekels of silver. If they seize a slave at a storehouse (?), before he has gone in, he shall give six half-shekels of silver."

94. "If a free man steal (in) a house, he shall give it in the same good condition. Formerly for a theft they would one pound of silver; now he shall give twelve half-shekels of silver. If he steal much, they shall impose upon him much; if he steal little, they shall impose upon him little, he shall let it go (?) to his home (?)."

1

95. "If a slave steal (in) a house, he shall give it in the same good condition. For the theft he shall give six half-shekels of silver. And he (the victim of the theft) shall cut off the nose of the slave and his ears. Then they give him back to his master. If he steal much, they shall impose upon him much; if he steal little, they shall impose upon him little. If his master say, 'I will compensate for him,' he shall compensate. If he refuse, then he shall give up that slave."

96. "If a free man steal (in) a granary and he obtain the grain of the granary, he shall fill the granary with grain. And he shall give twelve half-shekels of silver and let it go (?) to his home (?)."

97. "If a slave steal (in) a granary and he obtain the grain of the granary, he shall fill the granary with grain. And he shall give six half-shekels of silver, he shall let it go (?) to his home (?)."

## INCENDIARISM

98. "If a free man set a house ablaze, he shall build the house, again. And what (ever is) inside the house, be it a man, an ox, or a sheep, (that) perishes, nothing of these he need compensate."

99. "If a slave set a house ablaze, his master shall compensate for him. The nose of the slave and his ears they shall cut off, and give him back to his master. But if he do not compensate, then he shall give up this one."

100. "If anyone set a barn (?) ablaze, he shall feed his (the other's) (ox)en and shall bring (the fodder) until spring. He shall give back the barn (?). If straw (hay) was not therein, then he shall only build the barn (?)."

## HORTICULTURAL LAWS

101. "If anyone steal vines, or apple-trees, or onions, formerly (they would give for one vine.. hal(f shekel of silver, (for one pear-tree (?)..half-she)kel of silver, for one bushel (?) of onions one half-shekel of silver, and (in the palac)e (in the government building) he was to be struck (smitten?) with the spear (?). (Formerly) they proceeded thus. Now, if it is a free one, he shall give (six half-shekels of silver), and if it be a slave, he shall give three half-shekels of silver."

102. "If anyone steal wood out of (the forest (?), if it be one talent of woo)d, he shall give three half-shekels of silver; if two talents of wood, six half-shekels of silver; (if three (?) talents of wood: judgment of the king."

103. "If anyone steal a planting, if it be a rod of planting, then he shall plant it again and give one half-shekel of silver. If it be 2 rods of planting, then he shall plant it again and give two half-shekels of silver."

104. "If anyone cut off (pomegr)anates or pears (?), he shall give (. .half-shekel(s?) of si(l)ver, he shall let it go (?) to his home (?)."

105. "If anyone set (brushwood (?) ablaze and (leave (?) it there, and it (the fire) seize (a vineya)rd, if vines, apple-trees, (pomegranates, and pe)artrees (?) burn up, for one tree he shall give (six) half-shekels of silver and plant the planting again; he shall let it go (?) to his home (?). And if it be a slave, he shall give three half-shekels of silver."

106. "If anyone set (?) fire to his field and let it go out to standing grain and set the field ablaze, the one who sets it ablaze then shall take the burned field and give a good field to the owner of the field; then he (this one) may reap (?) (it)."

## INCENDIARISM

98. "If a fire not a house ablaze, he shall build and let it go out, or a fault, [illegible] nothing of theirs be used combustible."

99. "If a slave not a house ablaze, his master shall compensate for him. The case of the slave and his core they shall cut off, and give his body to his master. But if he be not compensate, then he shall not slay him."

100. "If anyone set a barn (1) ablaze, he must [illegible] (other) [illegible] and shall bring (the fodder) until replaced. He shall give back the barn (1). If straw (hay) was not therein, then he shall only build the barn (1)."

## MONETARY LAWS

101. "If anyone steal silver, or cost-items, or whatever, [illegible] (the one) shall give for him silver. Half-shekel of silver (the one-quarter) (1) half-shekel of silver. But when he bought (1) of money one half-mina of silver, and (in the palace) (in the gateway building) he was to be struck (restored) with the spear (1). (Whereby) they [illegible] them. Now, if it is a free one, he shall give him half-shekels of silver, and if he is a slave, he shall give three half-shekels of silver."

102. "If anyone steal cud of (the lamps (1), if it be one [illegible] of wood, he shall give three half-shekels of silver; if he [illegible] of wood, six half-shekels of silver (if three (1) talents of wool [illegible] the thief."

103. "If anyone steal a planting, if it be a rod of planting, then he shall plant it and give one half-shekel of silver. If it be a rods of planting, then he shall plant it again and give ten half-shekels of silver."

104. "If anyone cut off (owner)-mates or penis (1), he shall give [illegible] half-shekels of silver, he shall [illegible] (1) to his home (1)."

105. "If anyone not (unknown (1) oblate and (harp (1) it there, and if (the flax) solve (a vinyard), if vines, apple-trees, [illegible] and palmtrees (1) next to, for one [illegible] he shall give (six [illegible] of silver and plant the planting again he shall [illegible] (1) to his home (1). And if it be a slave, he shall give eight half-shekels of silver."

106. "If anyone not (1) flee to his field and let it go out to steal the grain and not the field ablaze, the one who sets it ablaze then shall take the burned field and give a good field to the owner of the field. Then (while one) may [illegible] (1) (1)."

107. "If a man allow his sheep to wander in a vineyard and they (he?) destroy it, if it be a mature one, he shall give for one acre ten half-shekels of silver; if it be bare (of grapes), he shall give three (var., five) half-shekels of silver."

108. "If anyone steal apples from a fenced (?) vineyard, if (from) one hundred trees, he shall give (te)n (?) half-shekels of silver, he shall let it go (?) to his home (?). But if it be not fenced (?) and he steal apples, he shall give three half-shekels of silver."

109. "If anyone appropriate fruit out of a vineyard (?), if (from) 100 trees, he shall give six half-shekels of silver."

110. "If anyone steal madder (berries?) out of a. . .(a special kind of field or garden?), to what he steals he shall give in addition the same amount."

111. "(If) anyone pull (?) a (. . .)., (it is) enchantment (and falls under) the judgment of the king."

112. "(If) they give a field of a soldier (and) grain (to captive(s (? or ( to a captive)e), (for three years) they (var., he) shall not do (tenancy but)ies; but in the fourth year (he (?) shall do the te(nancy duties. The field (?) they (?) shall thae (?) like (lit., with) the soldiers. (Var., But in the fourth year he shall render (?) (tenancy duties and impost) (with-) like the soldiers.)"

113. "If anyone cut off (a vine, he himself shall take the vine) cut off and shall give a (good) vine to the owner of the vine. . . . . (single words)."

## FURTHER LAWS CONCERNING THEFT AND DAMAGES

119. "If anyone (steal) a water fowl (or a) tamed (. . .), (formerly) they would give (. .half-shekels of silver). Now (he shall give twelve half-shekels of silver, he shall let it go (?) to his home (?)."

120. "If (anyone) steal ranging (? lit., found?) t(amed (?) birds, if ten birds, (he shall give) one half-shekel (of silver)."

121. If anyone, a free man, steal a plow, (formerly (?)) its owner (was to) put him upon the plow (?) (and. . . .). Formerly they proceeded thus. Now he shall give six half-shekels (of silver), he shall let it go (?) to his home (?). And if it be a slave, (he shall give) three half-shekels of silver."

122. "If anyone steal things contained within (in the storehouse? in the cart?) by a cart, (formerly) they would give one half-shekel of silver to the storehouse (?). (Now) he shall give (. .half-shekel of silver, he shall let it go (?) to his home (?)."

123. "If (anyone steal. . , . .,formerly (?). . .(?)) pain of dea(th (?). . .(?); now (?))he shall give three half-shekels of sil(ver (and) shall give it away (?) to his home (?))."

124. "If anyone steal in (?) a shed (or a trunk of sesame wood?), he shall give (. .half shekels of silver), he shall let it go (?) to his home (?). If anyone load (?) carts, then (drive (?)) them to (?) the field and steal (it?) there (?), (. . . )., he shall give (. . . ) half-shekels of silver, he shall let it go (?) to his home (?)."

125. "If anyone steal a water trough (?), he shall give (. . half-shekels). If anyone steal a yoke harness (?) or collar harness (?), he shall give one half-shekel of silver."

126. "If anyone steal a . . . (some wooden object) in the door of the palace, he shall give six half-shekels of silver. If anyone steal a bronze lance in the gate of the palace, he shall die. If anyone steal an (ornamental) copper nail (?), he shall give one-half peck of barley. If anyone steal curtains (?) of ( as large as ) one cloth, he shall give one woolen cloth."

127. "If anyone steal (var., lifts out ) a door in a quarrel: whatever is lost, he shall compensate that ; he shall also give one pound of silver, he shall let it go (?) to his home (?)."

128. "If anyone steal bricks: to what he steals he shall give in addition the same amount. If anyone steal stones (or"((. .)stones") out of a foundation (?), for two stones he shall give ten stones. If anyone steal a stone pillar (?), or a harmiyalli stone ( out of a . . . ?), he shall give two half-shekels of silver."

129. "If anyone steal a horse's or a mule's bridle (?), rein (?), (. . .), or a bronze bell, formerly they (would gi(ve one pound of silver.) Now (he shall pay) twelve half-shekels of silver, he shall let it go (?) to his home (?)."

130. "If anyone steal (equ)ipment (?) of an ox or of a horse, (he shall give. . half-shekels of silver), he shall let it go (?) to his home (?))."

131. "If (anyone steal) a (leather). . (. .), (he shall give) six half-shekels of silver, (he shall let it go (?) to his home (?))."

132. "If a free man (or from a free man (anyone)) (steals (?) . . . . ., he shall give) six half-shekels of silver, (he shall let it go (?) to his home (?)). If it be a slave, (he shall give three half-shekels of silver)."

133. "If (from a ?) free m(an . . . . . ."

142. "(?) (If anyone) drive (?) (a chariot (?) . . . . . .) and (lose (?), or steal (?), its (?)) whee(l, he shall gi)ve one-half peck of barley (for one) wheel. (If it be a slave, (he shall give) three half-shekels of silver."

143. "If anyone, a free man, (or if from a free man anyone) steal (?)) a (copper) k(nife (?) or) a (copper). . .(a kind of priestly implement?), he shall give six half-shekels of silver, he shall let it go (?) to his home (?). If it be a slave, (he shall give) three half-shekels of silver."

144. "If a barber (cut) (?). . . with (?) a (copper) k(nife) (?) (or if (anyone with (?)) a barber's k(nife? etc.) and destroy them (. . . . . .). If (anyone destroy (?)) a fine garment (or cloth) with (?) a (fulling?) stock (a doorpost?), he shall give ten half-shekels of silver. If anyone cut off (,) (. . .), he shall give (. . half-shekels) of silver."

145. "If anyone (rent?) a cattle stable (for. . months (?)), he shall give six half-shekels of silver. (If he rent it for a few months (?)), he shall give one part of the hire. (Cf. note to sec. 144.)"

146. "If anyone be going to sell (?) house or village (hamlet), o(r. . .), or (. . .) and another come (and) prevent it (by dissuading the buyer?), then he make the trade (himself? or at a lower price?), the evil-doer shall give one pound of silver (and he) shall buy (according to) the (fir)st trade (lit., plural)."

147. "(If) anyone be going to sell (?) an unskilled (man) and another prevent it, (the evildoer) shall give (. .) half-shekels of silver."

148. "(If) anyone be (going to sell (?) an ox,) horse, mule, or ass, and another prevent it, (the evildoer) shall give (. .) half-shekels of silver."

149. "If anyone trade (away) a tamed (?trained?). (. .), and say "It died," and its owner traces it, he (the owner) may take it, and, in addition, he (the purloiner) shall give two persons."

## LAWS FIXING WAGES AND RENT

150. "If a man go for wages, fo(r one month his wages are . . half-shekels of silver). If a woman go for wages, (for one month her wages are. . half-shekels of silver)."

151. "If anyone h(ire) a plow-ox, for one month (its hire is) one half-shekel (of silver. If anyone) hire (a . . . .), fo(r one month its hire is. . half-shekel of silver)."

152. "If (anyone) hire a horse, (. . . . . for one month its hire is . . half-shekel of silver)."

(Some sections are missing.)

158. "If a man go for wages, bind sheaves (?), load (? lit., seize) (it into) carts, spread (?) (it on) the straw barn (and so forth till) they clear (?) the threshing-floor (?), for three months his wages are thirty pecks of barley. If a woman go for wages (in the) harv(est), for two months he (the proprietor) shall give twelve pecks of barley."

159. "If anyone harness a yoke of oxen, his wages are one-half peck of barley."

## DIFFERENT LAWS

162. "If anyone divert a ditch secretly (?backward?), he shall give one half-shekel of silver; if (var. adds, however) he direct (var., take?) the ditch afterward (? from behind?) upward again to the field of the neighbor by the waterwheel?), then he is permitted (? to do so), if he also (?) take (? it) down (without harming the other?), it may be his."

162a. "(If) anyone take (. . .) whose (. . .) he (?) fixes (?) and (?) (. .) it (?) (. . . If) anyone (let?) sheep (go) out of the pasture (and a sheep perish (?), (there shall be) com)pensation. And he (tak)es its skin and its meat."

163. "If anyone's young animal (?) resort (?) to a fold (?) (stable?), and then he (the owner of the fold) release it (lit., purify it) and drive it away, thus really taking the fold (?) from the fold-animal (?), but do not tell it to his neighbor, and without the knowledge of the neighbor drive away his young animal (?) so that is dies, there shall be compensation."

## RITUAL LAWS AND ONE AGAINST ENCHANTMENT

164. "If anyone come for borrowing (?), then make a quarrel and throw down (?) either bread or wine-can."

165. "then he shall give one sheep, ten loaves, and one jug (?) (of beer?). Then he cleanses his (the other's) house again (by the offering). (Not) till the year grows old (has elapsed) then may he salute (again) his (the other's) house."

166. "If anyone sow seed upon seed, his neck shall be put (?) upon the plow, then they shall harness a yoke of oxen, directing the face of this one this way, and the face of that one that way. The man shall die, and the oxen shall die. And he who sowed the field first, this one then may take it. Formerly they did thus."

167. "Now, one sheep shall be fetched (?) as (?) the substitute (?) of the man, and two sheep shall be fetched (?) as (?) the substitutes (?) of the oxen. And thirty loaves, three jugs (?) of beer (?) he shall give. Then he cleanses (it) again (by the offering). And he who sowed the field first, this one then may reap (?) it."

168. "If anyone "break" the boundary of a field, he shall drive one . . ., the owner of the field shall cut (a strip of) one rod off the field, then he (the other?) shall take it. And he who breaks the boundary (var., the fields) shall give one sheep, ten loaves, one jug (?) of beer (?). Then he cleanses the field again (by the offering)."

169. "If anyone buy a field and then 'break' the boundary, he shall take bread, then break it for the sungod and say: 'Plant (or, thou hast planted?) each (?) elzi-tree of mine (or, my e. has come) into the earth'; thus shall he say. (Whether) sun-god (or) weather-god, there is no quarrel (i.e., no difference)."

170. "If a free man kill a serpent and speak the name of another, he shall give one pound of silver, if a slave, this one shall die."

## DIVERSE LAWS

171. "If a mother send over (?) to her son his garment and cast off her son, if her son enter again, then take his door, then send it over (?), he take his headrest (?) and his chair (?), then send it over (?), then she shall take these things back and shall make her son her son again."

172. "If anyone keep a free man alive in a hungry year then (this one) shall give indemnification for it; if a slave, he shall give ten half-shekels of silver."

173. "If anyone oppose the judgment of the king, his house shall become a ruin (?). If anyone oppose the judgment of a dignitary, his head shall be cut off. If a slave rise against his master, he shall go into the pit (?)."

174. "If men fight one another, and then one dies, he (who killed) shall give one person."

175. "If a shepherd or an administrator (?) take a free woman, she shall be a slave for two years or for four years, and they may (?) pelt her children and nobody shall dare seize the missile (ston)s (?)."

176A. "If anyone remove (?) (a part of) the fence of a hull, (it falls under) the judgment of the king. They trade (as follows?). In the third year he (the bull) genders. The plow-ox, the wether, the he-goat gender in the third year."

## LAWS REGULATING PRICES

176B. "If anyone buy an artisan's apprentice (?), buy either a potter, a smith, a carpenter, a leatherworker, a tailor, a weaver, or a lace-maker (roper?), he shall give ten half-shekels of silver."

177. "If anyone buy an expert fowler, he shall give twenty-five half-shekels of silver. If anyone buy an unskilled man or woman, he shall give twenty half-shekels of silver."

## AGAINST UNCHASTITY

187. "If a man do evil with (an ox ) a cow, (it is) a capital crime (?), he shall die. They shall lead him to the king's hall (?). But the king may kill him, and the (king) may grant him his life. But he shall not approach the king."

188. "I(f a man) do (evil with. . . ), (it is) a capital crime (?), he shall die, t(hey) shall lead him to the king's hall (?). But the king may kill him, and the (king may grant) him (his life). But he shall not approach the king."

189. "(If a man) do evil with his own mother, (it is) a capital crime (?). If a (man) do evil with a daughter, (it is) a capital crime (?). If a man do evil with a son, (it is) a capital crime (?)."

190. "But if they come willingly, man and woman, there shall be no punishment (?). And if a man do evil with his stepmother (?), there shall be no punishment. But if his father be living, (it is) a capital crime (?)."

191. "If a free man picks up (?) now this one, now that one (?), now in this country, then in that country, (there shall be) no punishment. If both (live) in (one) place he know them (?), (it is) a capital crime (?)."

192. "If the man of a woman die, his wife may take the man's patrimony."

193. "If a man have taken a woman, then the man die and his brother take her, then his father take her; if again also his father die and one brother of his take the woman whom he had taken (there is) no punishment."

194. "If a free man pick up (?) female slaves, now one, now another (there is) no punishment. If brothers (or relations) sleep with a free (woman), (there is) no punishment. If father and son sleep with a female slave or a harlot, (there is) no punishment."

195. "If a man sleep with the wife of his brother, but his brother is living, (it is) a capital crime (?). If a man have taken a free (woman), then have intercourse also with her daughter, (it is) a capital crime (?). If he have taken her daughter, then have intercourse with her mother or her sister, (it is) a capital crime (?)."

196. "If anyone's male and female slaves practice (harlot)ry (?), then they shall bring them and let them dwell, this one at this village, that one at that village. For this one one sheep, for that one one sheep, shall be fetched (?) as (?) a substitute (?)."

197. "If a man seize a woman in the mountain, (it is) the man's wrong, he shall die. But if he seize (her) in the house, (it is) the woman's fault, the woman shall die. If the man find them and then kill them, (there is) no punishing him."

198. "If he lead them to the gate of the palace and say 'My wife shall not die,' then he shall grant life to his wife and likewise to the adulterer, then mark his head. If he say, 'These two shall die," then they shall suffer for their crime (?). The king may kill them; the king may grant them their lives."

199. "If anyone do evil with a pig (or) a dog, he shall die. One may lead (him) to the gate of the palace. The king may kill them; the king may grant them their lives. But he shall not approach the king. If an ox spring upon a man, the ox shall die, and the man shall not die. One sheep shall be fetched (?) as (?) a substitute (?) for the man, and they shall kill it. If a pig spring against a man, (there is) no punishment."

200A. "If a man do evil with a horse or a mule, (there is) no punishment. But he shall not approach the king and shall not become a priest. If he (var., anyone) sleep with a foreign woman and pick up (?) now (this one, now that one) (?), (there is) no punishment."

## PRICE OF APPRENTICING

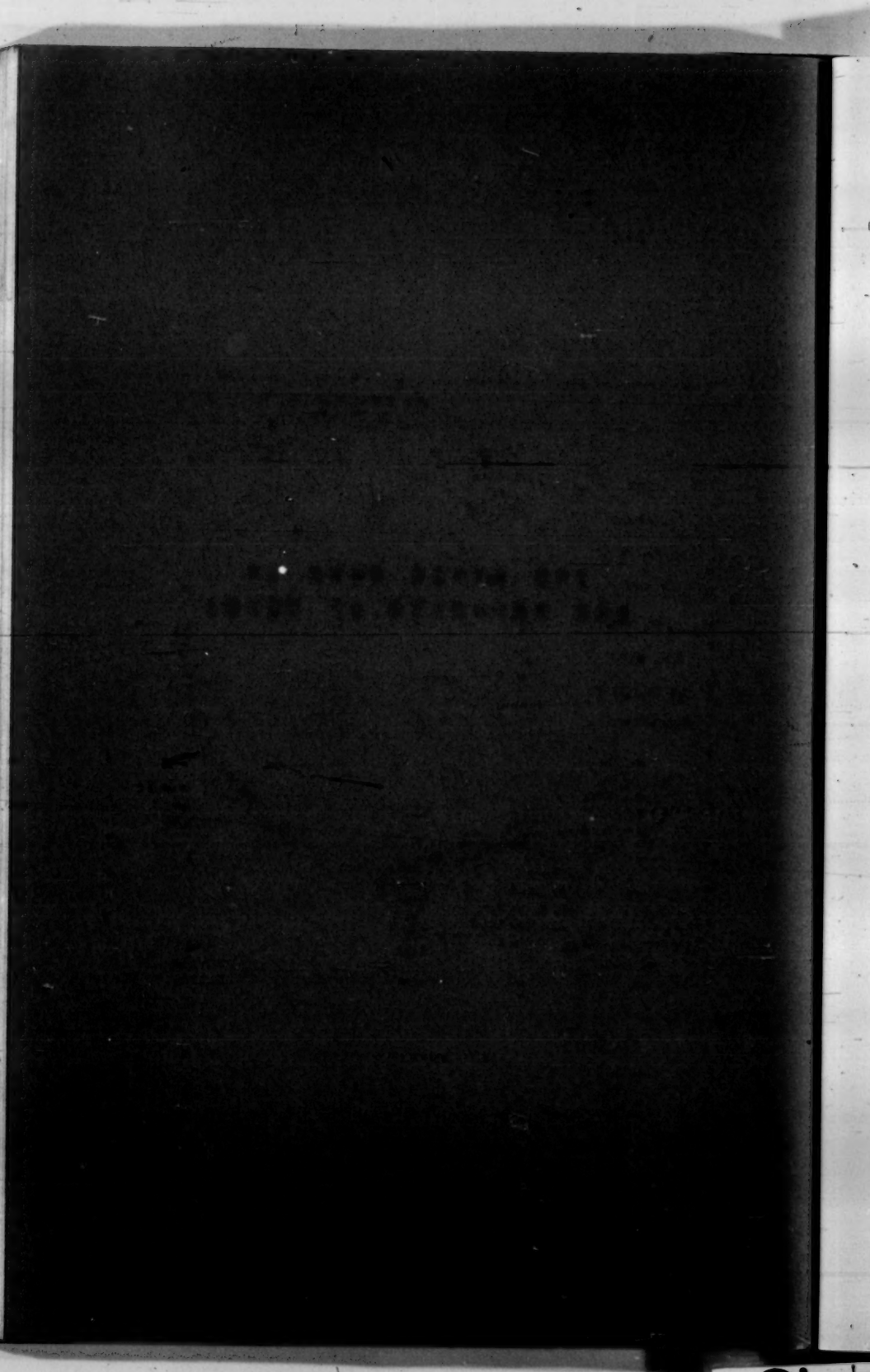
200B. "If anyone give a son for instruction, be it a carpenter, o(r a pott)er, or (a weaver), or a leatherworker, or a tailor, or a smith, he shall give six half-shekels of silver for the instruction. If he (the artisan) have taught him, he (the father) shall give him a person."

# PART II

# CHINESE

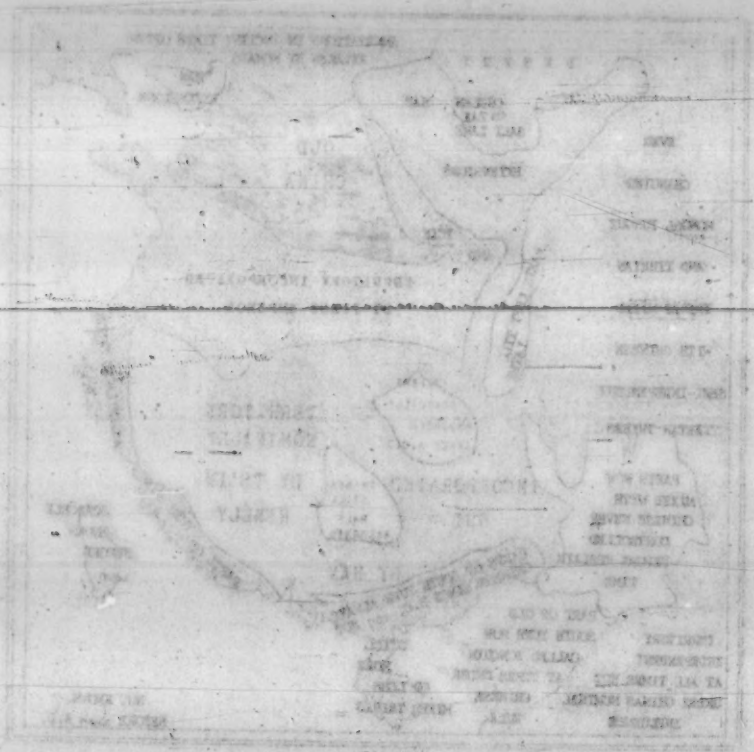
gardenstate publishing company, inc.

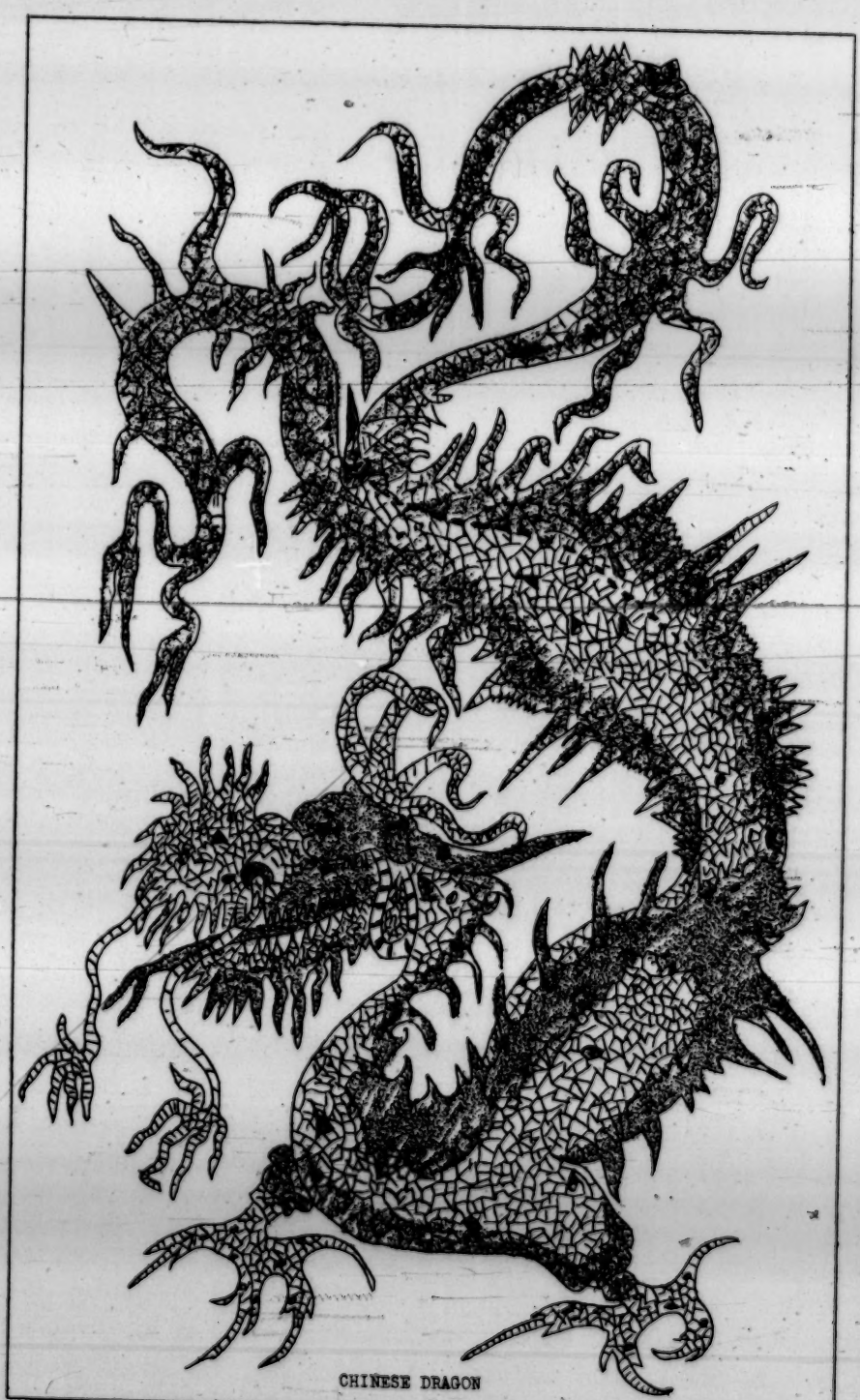
# THE CIVIL CODE OF THE REPUBLIC OF CHINA



ANCIENT CHINA

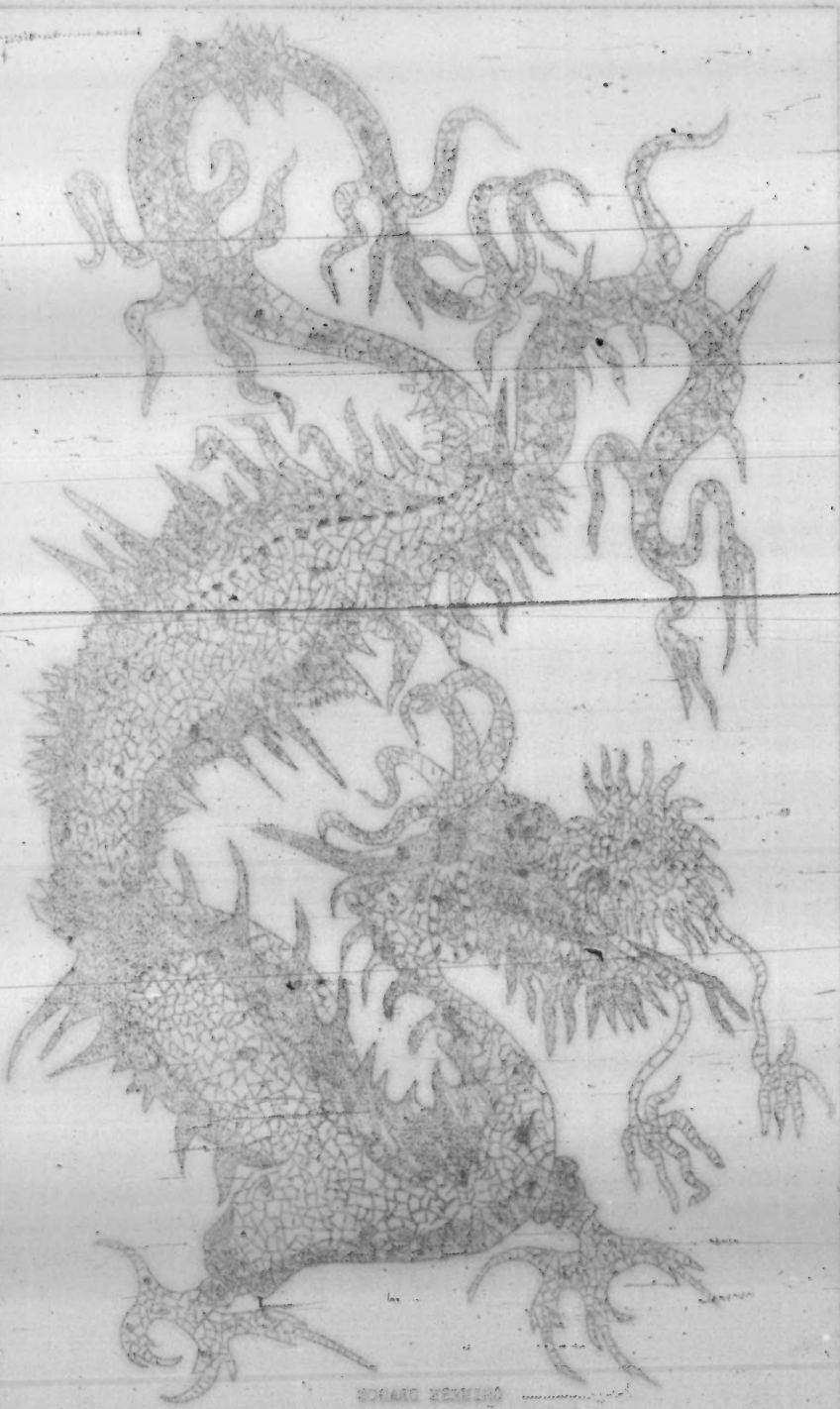
endroicus publishing company inc





CHINESE DRAGON

dover publications, inc.



BOOK I

GENERAL PRINCIPLES

CHAPTER IV

Article 143.—The prescription of claims of a husband against his wife or of a wife against her husband is not complete before the expiration of one year after the dissolution of marriage."

BOOK II

OBLIGATIONS

CHAPTER I

GENERAL PROVISIONS

TITLE I.—SOURCES OF OBLIGATIONS

Part 5.—WRONGFUL ACTS

Article 194.—"In case of death caused by a wrongful act the father, mother, sons, daughters and spouse of the deceased may claim for a reasonable compensation in money for such damage as is not a purely pecuniary loss."

TITLE IV.—GIFT

Article 416.—"The donor may revoke a gift if the donee has acted toward the donor in any of the following ways:—

1. Committing against the donor or his nearest relatives an intentional offence expressly punishable under the Penal Code, or

2. Failing to perform his duty to furnish maintenance to the donor, in case he has such duty.

The right of revocation specified in the preceding paragraph is extinguished by prescription if not exercised within one year from the time when the donor knew of the grounds for revocation. The same rule applies if the donor has expressly forgiven the donee."

# BOOK IV

# FAMILY

## CHAPTER 1

## GENERAL PROVISIONS

Article 967.—"Lineal relatives (of a person) by blood are his relatives by blood from whom he is descended or those that are descended from him."

"Collateral relatives (of a person) by blood are his non-lineal relatives that are descended from the same common ancestor as the person himself."

Article 968.—"The degree of relationship by blood between a person and his lineal relative by blood is determined by counting the number of generations upwards or downwards from himself (as the case may be), one generation being taken as one degree. As between the person and his collateral relative, the degree of relationship is determined by the total number of generations counting upwards from himself to the common lineal ancestor and then from such common ancestor downwards to the relative by blood with whom the degree of relationship is to be determined."

Article 969.—"Relatives by marriage (of a person) are the spouse of his relative by blood, the relative by blood of his spouse and the person who is married to the relative by blood of his spouse."

Article 970.—"The line and the degree of relationship between relatives by marriage is determined in the following ways:—

1. As regards the spouse of a relative by blood, by the line and degree of relationship of the person who is married to the said spouse.

2. As regards a relative by blood of a spouse, by the line and degree of relationship between such relative by blood and the said spouse.

3. As regards the person to whom a relative by blood of a spouse is married, by the line and the degree of relationship between such person and the said spouse."

Article 971.—"Relationship by marriage is extinguished by divorce. The same rule applies when a wife remarries after the death of the husband, or a 'chui-fu' remarries after the death of the wife."

## CHAPTER II

## MARRIAGE

### TITLE I.—BETROTHAL

Article 972.—"An agreement to marry shall be made by the male and the female parties of their own accord."

the female parties of their own accord."

Article 973.—"A man who has not completed his seventeenth year of age and a woman her fifteenth may not make an agreement to marry."

Article 974.—"Where a minor makes an agreement to marry, the consent of his statutory agent must be obtained."

Article 975.—"No demand may be made for the specific performance of an agreement to marry."

Article 976.—"Where one of the betrothed parties is found in one of the following conditions, the other party may dissolve the agreement to marry:—

1. Where, having made an agreement to marry, the party makes another agreement or concludes a marriage with another person;

2. Where the party wilfully fails to observe the appointed date of marriage;

3. Where it has been uncertain for over a year whether the party is alive or dead;

4. Where the party has a serious disease which is incurable;

5. Where the party has venereal or other loathsome disease;

6. Where, having made the agreement to marry, the party becomes permanently disabled;

7. Where, having made the agreement to marry, the party has sexual intercourse with a third person;

8. Where, having made the agreement to marry, the party is sentenced to imprisonment;

9. Where other grave reasons exist.

"In the case where a person intends to dissolve an agreement to marry in accordance with the provisions of the preceding paragraph, if circumstances do not enable him to declare such intention to the other party, it is not necessary for him to do so, and he is no longer bound by the agreement as from the time when its dissolution may be effected."

Article 977.—"Where an agreement to marry is dissolved in accordance with the provisions of the preceding article, the innocent party may claim compensation from the other party who is at fault for damage thus sustained."

Article 978.—"A party to an agreement to marry, who breaks it without any of the grounds provided in Article 976, shall be liable to compensate the other party for any damage thus sustained."

Article 979.—"In the case provided in the preceding article, even where the damage is not a pecuniary loss, the injured party, provided that he is not at fault, may also claim an equitable compensation in money."

"The aforementioned claim is not transferable and may not pass to heirs, unless it has been acknowledged by contract or unless an action has been commenced."

Article 972.--"A man who has not completed his seventeenth year of age and a woman her fifteenth year may not make an agreement to marry."

Article 974.--"Where a minor makes an agreement to marry, the consent of his statutory agent must be obtained."

Article 975.--"No demand may be made for the specific performance of an agreement to marry."

Article 976.--"Where one of the betrothed parties is found in one of the following conditions, the other party may dissolve the agreement to marry:--

1. Where, having made an agreement to marry, the party has another agreement or concludes a marriage with another person;

2. Where the party wilfully fails to observe the appointed date of marriage;

3. Where it has been uncertain for over a year whether the party is alive or dead;

4. Where the party has a serious disease which is incurable;

5. Where the party has vonitual or other loathsome disease;

6. Where, having made the agreement to marry, the party commits permanently disabled;

7. Where, having made the agreement to marry, the party has sexual intercourse with a third person;

8. Where, having made the agreement to marry, the party is sentenced to imprisonment;

9. Where other grave reasons exist.

"In the case where a person intends to dissolve an agreement to marry in accordance with the provisions of the preceding paragraph, if circumstances do not enable him to declare such intention to the other party, it is not necessary for him to do so, and he is no longer bound by the agreement as from the time when the dissolution may be effected."

Article 977.--"Where an agreement to marry is dissolved in accordance with the provisions of the preceding article, the innocent party may claim compensation from the other party who is at fault for damage thus sustained."

Article 978.--"A party to an agreement to marry, who breaks it without any of the grounds provided in Article 976, shall be liable to compensate the other party for any damage thus sustained."

Article 979.--"In the case provided in the preceding article, even where the damage is not a pecuniary loss, the injured party, provided that he is not at fault, may also claim an equitable compensation in money."

"The aforementioned claim is not transferable and may not pass to heirs, unless it has been acknowledged by contract or unless an action has been commenced."

TITLE II.--CONCLUSION OF MARRIAGE

Article 980.--"A man who has not completed his eighteenth year of age and a woman her sixteenth may not conclude a marriage."

Article 981.--"A minor must have the consent of his statutory agent for concluding a marriage."

Article 982.--"A marriage must be celebrated by open ceremony and in the presence of two or more witnesses."

Article 983.--"A person may not marry any of the following relatives:--

1. A lineal relative by blood or by marriage.

2. A collateral relative by blood or by marriage of a different rank, except where the former is beyond the eighth degree of relationship and the latter beyond the fifth.

3. A collateral relative by blood who is of the same rank and within the eighth degree of relationship; but this provision does not apply to 'piao cousins.'

"The marriage prohibitions between relatives by marriage provided in the preceding paragraph shall continue to apply even after the dissolution of the marriage which has created the relationship."

Article 984.--"A guardian may not marry his ward during the continuance of guardianship, unless the consent of the ward's parents has been obtained."

Article 985.--"A person who has a spouse may not contract another marriage."

Article 986.--"A person who, on account of adultery, has been divorced or sentenced to criminal penalty may not marry the other party to the adultery."

Article 987.--"A woman may not re-marry until six months have elapsed after the dissolution of her first marriage, unless within the six months she has given birth to a child."

Article 988.--"A marriage is void in any of the following cases:--

1. Where it does not conform to the form provided by Article 982.

2. Where it violates the marriage prohibition between relatives as provided in Article 983."

Article 989.--"Where a marriage is concluded contrary to the provision of Article 980, the party concerned or his statutory agent may apply to the Court for its annulment; but such application may not be made, where the party concerned has attained the age specified in the said article or where the woman has become pregnant."

Article 990.--"Where a marriage is concluded contrary to the provision of Article 981, the statutory agent may apply to the Court for its annulment: but such application may not be made where six months have elapsed after the discovery of the fact or one year has elapsed after the conclusion of the marriage, or where the woman has become pregnant."

Article 991.--"Where a marriage is concluded contrary to the provision of Article 984, the ward or his nearest relative may apply to the

TITLE II.—CONCLUSION OF MARRIAGE

Court for its annulment; but such application may not be made where one year has elapsed after the conclusion of the marriage."

Article 992.—"Where a marriage is concluded contrary to the provision of Article 985, an interested party may apply to the Court for its annulment; but such application may not be made after the dissolution of the former marriage."

Article 993.—"Where a marriage is concluded contrary to the provision of Article 986, the former spouse may apply to the Court for its annulment; but such application may not be made where one year has elapsed after the conclusion of the marriage."

Article 994.—"Where a marriage is concluded contrary to the provision of Article 987, the ex-husband or his lineal relatives by blood may apply to the Court for its annulment; but such application may not be made where six months have elapsed after the dissolution of the former marriage, or where the woman has become pregnant after the latter marriage."

Article 995.—"Where one of the parties is incapable of marital intercourse at the time of marriage and such incapacity is incurable, the other party may apply to the Court for the annulment of the marriage; but such application may not be made after three years from the time of the discovery of such incurability."

Article 996.—"Where, at the time of the marriage, one of the parties is in a condition of absence of discernment or mental disorder, such party may within six months after he is restored to normal condition apply to the Court for its annulment."

Article 997.—"A person who has been induced by fraud or by duress to conclude a marriage may apply to the Court for its annulment within six months after the discovery of the fraud or after the cessation of the duress."

Article 998.—"The effect of an annulment of marriage is not retroactive."

Article 999.—"A party to a marriage who has sustained damage through the nullity or the annulment of the marriage may claim compensation from the other party. This, however, does not apply where the other party is not at fault."

In the case mentioned in the preceding paragraph, the injured party, if he is not at fault, may also claim an equitable compensation in money even where the injury is not a pecuniary loss.

The claim mentioned in the preceding paragraph is not transferable and does not pass to heirs, unless it has been acknowledged by contract or an action has been commenced."

Article 1000.—"Unless otherwise agreed upon by the parties, a wife shall prefix to her surname that of the husband, and a 'Chui-fu' shall prefix to his surname that of the wife."

Article 1001.—"Husband and wife are under mutual obligation to live together, unless for good reason they cannot live together."

Article 1002.—"A wife takes the domicile of the husband as her domicile; a 'chui-fu' takes the domicile of the wife as his domicile."

Article 1003.—"In daily household matters, the husband and the wife act as agents for each other.

Court for its annulment; but such application may not be made where one year has elapsed after the conclusion of the marriage."

Article 202.—"Where a marriage is concluded contrary to the provision of Article 200, an interested party may apply to the Court for its annulment; but such application may not be made after the dissolution of the former marriage."

Article 203.—"Where a marriage is concluded contrary to the provision of Article 200, the former spouse may apply to the Court for its annulment; but such application may not be made where one year has elapsed after the conclusion of the marriage."

Article 204.—"Where a marriage is concluded contrary to the provision of Article 201, the ex-husband or his lineal relatives by blood may apply to the Court for its annulment; but such application may not be made where six months have elapsed after the dissolution of the former marriage, or where the woman has become pregnant after the latter marriage."

Article 205.—"Where one of the parties is incapable of marital intercourse at the time of marriage and such incapacity is incurable, the other party may apply to the Court for the annulment of the marriage; but such application may not be made after three years from the time of the discovery of such incurability."

Article 206.—"Where, at the time of the marriage, one of the parties is in a condition of absence of discernment or mental disorder, such party may within six months after he is restored to normal condition apply to the Court for its annulment."

Article 207.—"A person who has been induced by fraud or by duress to conclude a marriage may apply to the Court for its annulment within six months after the discovery of the fraud or after the cessation of the duress."

Article 208.—"The effect of an annulment of marriage is not retroactive."

Article 209.—"A party to a marriage who has material damage through the nullity or the annulment of the marriage may claim compensation from the other party. This, however, does not apply where the other party is not at fault."

In the case mentioned in the preceding paragraph, the injured party, if he is not at fault, may also claim an equitable compensation in money even where the injury is not a pecuniary loss.

The claim mentioned in the preceding paragraph is not transferable and does not pass to heirs, unless it has been acknowledged by contract or an action has been commenced."

Article 210.—"Unless otherwise agreed upon by the parties, a wife shall prefix to her surname that of the husband, and a 'domi-fu' shall prefix to his surname that of the wife."

Article 1003.—"Husband and wife are under mutual obligation to live together, unless for good reason they cannot live together."

Article 1003.—"A wife takes the domicile of the husband as her domicile, a 'domi-fu' takes the domicile of the wife as his domicile."

Article 1003.—"In daily household matters, the husband and the wife act as agents for each other."

Where one of the parties abuses the aforesaid right of agency, the other party may restrict it, but such restriction cannot be set up against bona fide third parties."

## TITLE III.--MATRIMONIAL PROPERTY REGIMES

### Part 1.--General Provisions

Article 1004.--"Husband and wife may, before or after marriage, adopt by contract one of the contractual regimes provided by this Code, as their matrimonial property regime."

Article 1005.-- "Where husband and wife have not adopted by contract any system for the holding of matrimonial property, the statutory regime shall, unless otherwise provided by this Code, be taken as their matrimonial property regime."

Article 1006.--"In the conclusion, modification or rescission of a contract for the holding of matrimonial property, if either party is a minor or an interdicted person, the consent of his statutory agent must be obtained."

Article 1007.-- "The conclusion, modification or rescission of a contract for the holding of matrimonial property must be done in writing."

Article 1008.--"The conclusion, modification or rescission of a contract for the holding of matrimonial property can not be set up against third parties unless it has been registered."

"Concerning registration as provided in the foregoing paragraph, it shall be regulated by special law."

Article 1009.--"Where either husband or wife is declared bankrupt, the matrimonial property regime automatically becomes the separation of property regime."

Article 1010.--"In any of the following cases, the Court shall, at the instance of either husband or wife, order the separation of property regime to be set up:--

(1) Where one of the parties is by law liable for providing the living expenses of the household but fails to provide such;

(2) Where the property of either husband or wife is not sufficient to satisfy his or her liabilities, or where their property held in common is not sufficient to satisfy their total liabilities;

(3) Where according to law, the disposition of property by one party requires the consent of the other, and such consent is refused without good reason."

Article 1011.--"Where a creditor has not been satisfied in full by an attachment against the property of either the husband or the wife, the Court may, at the instance of the creditor, order the separation of property regime to be set up."

Article 1012.-- "During the continuance of the marriage, husband and wife may, by contract, rescind their former contract for the holding of property, or adopt another form of contractual regime."

Article 1013.-- "The following constitutes separate property:--

1. Articles which are exclusively intended for the personal use of the husband or wife.

2. Articles which are essential to the occupation of the husband or the wife.

3. Gifts acquired by the husband or the wife which the donor has designated to be separate property.

4. Remunerations which the wife acquires by her labour."

Article 1014.—"Husband and wife may agree by contract that certain specific property shall be regarded as separate property."

Article 1015.—"The separate property provided in the two preceding articles is governed by the provisions concerning the separation of property regime."

Article 1016.—"All property belonging to the spouses at the time of the marriage as well as property acquired by them during the continuance of the marriage becomes their union property. But the separate property of the wife provided in Article 1013 is excepted."

Article 1017.—"That part of the union property which belonged to the wife at the time of marriage as well as that which she acquires by inheritance or other gratuitous title during the continuance of the marriage constitutes her contributed property and remains in her ownership."

"That part of the union property which forms the husband's contributed property as well as that which does not belong to the wife's contributed property is in the ownership of the husband."

"The fruits of the wife's contributed property fall into the ownership of the husband."

Article 1019.—"The husband has the right to use, and to collect fruits from, the contributed property of the wife."

Article 1020.—"The husband must have the consent of the wife for disposing of her contributed property, unless such disposition is necessary in the course of management."

"The absence of such consent cannot be set up against a third party, unless he knew or had the means of knowing its absence, or unless the property in question could have under the circumstances been regarded as belonging to the wife."

Article 1021.—"The wife may dispose of the union property within the limits of her power of agency as specified in Article 1003."

Article 1022.—"The husband is under an obligation to inform his wife, whenever requested to do so by the wife, as to the condition of her contributed property."

Article 1023.—"The husband is liable for the following:—

1. Debts incurred by him before marriage.

2. Debts incurred by him during the continuance of the marriage.

3. Debts incurred by the wife through her acts of agency as specified in Article 1003."

Article 1024.--"The wife is liable to the extent of her whole property for the following:--

1. Debts incurred by her before marriage.

2. Debts incurred by her in the pursuit of her trade or profession.

3. Debts incurred by her by virtue of an inheritance.

4. Debts arising from her wrongful acts."

Article 1025.--"The wife is liable only to the extent of her separate property for the following:--

1. Debts which she contracted while limiting her liability to her separate property

2. Debts arising from her acts which exceed the power of agency specified in Article 1003."

Article 1026.--"In case the husband is insolvent, the living exponses of the household shall be borne by the wife out of her whole property."

Article 1027.--"Where debts payable out of the contributed property of the wife have been paid out of that of the husband, or where the husband's debts have been paid out of the wife's contributed property, the husband and wife may claim compensation from one another. But compensation cannot be claimed before the dissolution of the union of property."

"Where debts payable out of the wife's separate property have been paid out of the union property or where debts of the union property have been paid out of the wife's separate property, compensation can be recovered even during the continuance of the marriage."

Article 1028.--"On the death of the wife, her contributed property passes to her heirs. If there is any deficit, the husband is liable to make compensation, provided that such deficit has arisen from circumstances for which he was responsible."

Article 1029.--"On the death of the husband, the wife recovers her contributed property, and if there is any deficit, she may claim compensation from his heirs."

Article 1030.--"Unless it has been otherwise provided for, the wife, on the division of the union property, recovers her contributed property. If there is any deficit, it shall be borne by the husband or his heirs, except where the deficit arises from circumstances for which the wife is responsible."

## Part 2.--Contractual Regimes

### Section 1.--Community of Property

Article 1031.--"With the exception of separate property, all the property and income of the husband and the wife constitute common property to be owned by them in common."

"Neither the husband nor the wife may dispose of his or her share of the common property."

Article 1032.--"The common property is managed by the husband. The cost of management is borne out of the common property."

Article 1033.--"Either of the spouses must have the consent of the other for disposing of the common property, unless such disposition is necessary in the course of management.'

'The absence of such consent cannot be set up against a third party, unless he knew or had the means of knowing its absence, or unless the property in question could have, under the circumstances, been regarded as part of the common property."

Article 1034.--"The husband is liable personally and to the extent of the common property for the following:--

1. Debts incurred by him before marriage,

2. Debts incurred by him during marriage,

3. Debts incurred by the wife through her acts of agency specified in Article 1003,

4. Debts, other than those provided by the preceding section, incurred by the wife during marriage that are chargeable to the common property."

Article 1035.--"The wife is liable personally and to the extent of the common property for the following:--

1. Debts incurred by her before marriage,

2. Debts incurred by her in the pursuit of her trade or profession,

3. Debts incurred by her by virtue of an inheritance

4. Obligations arising from her wrongful acts."

Article 1036.--"The wife is liable only to the extent of her separate property for the following:--

1. Debts which she contracted while limiting her liability to her separate property,

2. Debts arising from her acts which exceed the power of agency specified in Article 1003."

Article 1037.--"The wife is also personally liable for the living expenses of the household wherever the common property is insufficient to meet them."

Article 1038.--"Where debts payable out of the common property have been paid out of it, no claim for compensation arises as between the husband and wife.'

'Where debts payable out of the common property have been paid out of the separate property, or where debts payable out of separate property have been paid out of the common property, claims for compensation arise and can be made even during the continuance of the marriage."

Article 1039.--"Upon the death of one of the spouses, half the common property passes to the heir of the deceased and the other half devolves on the surviving party.'

'In the case of the division of property mentioned in the foregoing paragraph, where some other agreement exists as to the amounts, such agreement shall be followed."

"In the case provided in the first paragraph, where the surviving party is by law unable to inherit, he can claim no greater a portion of the common property than he would get in the case of divorce."

Article 1040.—"On the dissolution of the community, each of the spouses acquired a half of the common property, unless otherwise provided for by law or contract."

Article 1041.—"The husband and wife may agree by contract that the common property shall consist only of income."

"Income as specified in the preceding paragraph comprises earnings of the husband and the wife as well as fruits from their contributed property during the continuance of the marriage and it is governed by the provisions concerning the Community of Property Regime."

"The contributed property of the husband and the wife, which belonged to them at the time of marriage or which devolves on them during the continuance of the marriage, is governed by the provisions concerning the Statutory Regime."

Section 2.—Unity of Property Regime

Article 1042.—"The husband and wife may agree by contract to fix a valuation of the wife's property other than her separate property, and to transfer its ownership to the husband, while the wife acquires the claim to recover the value so fixed."

Section 3.—Separation of Property Regime

Article 1044.—"In the separation of property regime, the husband and the wife each retains the ownership and management of, and the right to use and to collect fruits from his or her property."

Article 1045.—"Where the wife hands over the management of her property to the husband, it is presumed that he has the right to take the income from the property towards defraying the living expenses of the household."

"The wife has the right to take back at any time the management mentioned in the preceding paragraph. Such right cannot be waived."

Article 1046.—"The husband is liable for the following:—

1. Debts incurred by him before marriage.

2. Debts incurred by him during the continuance of the marriage.

3. Debts incurred by the wife through her acts of agency specified in Article 1003."

Article 1047.—"The wife is liable for the following:

1. Debts incurred by her before marriage.

2. Debts incurred by her during the continuance of the marriage.

Where the husband is insolvent, the wife is liable for debts incurred either by her husband or by herself for the living expenses of the household."

Article 1048.—"The husband may request the wife to bear a due share of the living expenses of the household."

andronicus publishing company, inc.

## TITLE IV.—DIVORCE

Article 1049.—"Husband and wife may effect a divorce themselves where they mutually consent to it; but in the case of a minor, the consent of his or her statutory agent must be obtained."

Article 1050.—"Divorce by mutual consent if effected in writing and requires the signatures of at least two witnesses."

Article 1051.—"After divorce by mutual consent, the guardianship of the children rests with the husband; but where it has been otherwise agreed upon, such agreement shall be followed."

Article 1052.—"Either spouse may apply to the Court for a divorce provided that one of the following conditions exist:—

1. Where the other spouse has committed bigamy.

2. Where the other spouse has sexual intercourse with another person.

3. Where the spouse receives such ill-treatment from the other spouse as to render in intolerable to live together.

4. Where the wife has so ill-treated the lineal ascendants of the husband, or has been so ill-treated by them that life in common becomes intolerable.

5. Where the other party has deserted the spouse in bad faith and such desertion still continues.

6. Where the other party has made an attempt on the life of the spouse.

7. Where the other party has a loathsome disease which is incurable.

8. Where the other party has a serious mental disease which is incurable.

9. Where it has been uncertain for over three years whether the other party is alive or dead.

10. Where the other party has been sentenced to not less than three years imprisonment or has been sentenced to imprisonment for an infamous crime."

Article 1053.—"In the cases specified in Section 1 and 2 of the preceding articles, the party who has the right of action may not apply for a divorce, where he previously consented to the act or has since condoned it or has had cognizance of it for over six months, or where two years have elapsed after the occurence of the act."

Article 1054.—"In the cases specified in Section 6 and 10 of Article 1052, the party who has the right of action may not apply for a divorce where one year has elapsed after he had cognizance of the act or where five years have elapsed after the act occured."

Article 1055.—"In the case of a divorce by judicial decree, the provisions of Article 1051 shall apply in regard to guardianship of the children. But the Court may, in the interest of the children, appoint a guardian.

Article 1056.—"Where one of the spouse has suffered damage from a judicial divorce, he may claim compensation from the party at fault."

"In the case provided in the preceding paragraph, the injured party, provided he is not at fault, may also claim an equitable compensation in money even where the damage is not a pecuniary loss."

"The claim mentioned in the preceding paragraph is not transferable and may not pass to heirs unless it has been acknowledged by contract or an action has been commenced."

Article 1057.—"Where an innocent spouse is reduced to difficulties in livelihood on account of a judicial divorce, the other spouse, even if he be also innocent, shall pay an equitable sum for maintenance."

Article 1058.—"On diverce each spouse recovers his or her own property whatever was their matrimonial property regime. If there is any deficit, it is borne by the husband, unless such deficit arises from circumstances for which he is not responsible."

## CHAPTER 111

## PARENTS AND CHILDREN

Article 1059.—"A child assumes the surname of the father.

Where the husband is married into the house of the wife, the child assumes the surname of the mother. But where it has been otherwise agreed upon, such agreement shall be followed."

Article 1060.—"The domicile of a minor child is that of the father.

The domicile of a child whose father is a 'chui-fu' is that of the mother."

Article 1063.—"Where the wife conceived during the continuance of a marriage, the child so born is presumed to be legitimate.

In regard to presumption of legitimacy provided in the preceding paragraph, the husband may bring an action for disavowal if he can prove that he has not cohabited with the wife within the period of conception; but such disavowal must be effected within one year of the discovery of the child's birth."

Article 1064.—"A child born out of wedlock whose natural father and mother become married to each other is deemed to be legitimate."

Article 1065.—"A child born out of wedlock who has been acknowledged by the natural father is deemed to be legitimate; where he has been maintained by the natural father, acknowledgment is deemed to have been established.

In the relation to his mother, a child born out of wedlock is deemed to be legitimate and no acknowledgment is necessary."

Article 1066.—"A child born out of wedlock or his mother may repudiate the acknowledgment by his natural father."

Article 1067.—"The mother or other statutory agent of a child born out of wedlock may claim acknowledgment from his natural father in one of the following cases:—

"In the case provided in the preceding paragraph, the injured party, provided he is not at fault, may also claim an equitable compensation in money even where the damage is not a pecuniary loss."

"The claim mentioned in the preceding paragraph is not transferable, and may not pass to heirs unless it has been acknowledged by contract or an action has been commenced."

Article 1027.--"Where an innocent spouse is reduced to difficulties in livelihood on account of a judicial divorce, the other spouse, even if to be more innocent, shall pay an equitable sum for maintenance."

Article 1028.--"In divorce such spouse recovers his or her own property whatever may be its matrimonial property regime. If there is any fault, it is borne by the husband, unless such-default arises from circumstances for which he is not responsible."

CHAPTER III

PATERNITY AND CHILDREN

Article 1029.--"A child addresses the surname of the father.

"If the husband is married into the house of the wife, the child addresses the surname of the mother. But where it has been otherwise agreed upon, such agreement shall be followed."

Article 1030.--"The domicile of a minor child is that of the father.

"The domicile of a child whose father is a 'tobi-mu' is that of the mother."

Article 1031.--"Even the wife deserted during the continuance of a marriage, the child so born is presumed to be legitimate.

"In regard to presumption of legitimacy provided in the preceding paragraph, the husband may bring an action for disavowal if he can prove that he has not cohabited with the wife within the period of conception but such disavowal must be effected within one year of the discovery of the child's birth."

Article 1032.--"A child born out of wedlock whose natural father and mother become married to each other is deemed to be legitimate."

Article 1033.--"A child born out of wedlock who has been acknowledged by the natural father, acknowledgment by deemed to have been established."

In the relation to his mother, a child born out of wedlock is deemed to be legitimate and no acknowledgment is necessary."

Article 1034.--"A child born out of wedlock or his lawful representative may demand acknowledgment by his natural father."

Article 1035.--"The mother or other statutory agent of a child born out of wedlock may claim acknowledgment from his natural father in any of the following cases:--

1. Where there is the fact that the natural father and the mother cohabited during the period of conception.

2. Where paternity can be proved from documents by the natural father.

3. Where the mother became conceived through rape or seduction by the natural father.

4. Where the mother had sexual intercourse with the natural father due to his abuse of power."

"The right of claim provided in the preceding paragraph is extinguished if not exercised within five years from the time of the birth of the child."

Article 1068.—"The provisions of the preceding article shall not apply where within the period of conception the mother had sexual intercourse with a third person or was leading a licentious life."

Article 1069.—"The effect of legitimation of a child born out of wedlock is retroactive as from the time of birth, but the existing rights of third parties are not effected thereby."

Article 1070.—"Where a child born out of wedlock has been acknowledged by the natural father, such acknowledgment may not be revoked.

Article 1071.—"Where an heir is designated in accordance with the provision of Article 1143, the relation between such heir and the deceased is the same as in the case of a legitimate child, unless it is otherwise provided for by law."

Article 1072.—"Where a person adopts the child of another as his own child, the adopter is called adoptive father or adoptive mother and the person adopted is called adopted son or adopted daughter."

Article 1074.—"Where a married person adopts a child, he must do so jointly with his spouse.

Article 1076.—"Where a married person is to be adopted, the consent of his spouse must be obtained."

Article 1077.—"The relation between an adopted child and his adoptive parents, is the same as that between a legitimate child and his parents unless it is otherwise provided for by law."

Article 1081.—"Where either the adoptive parent or the adopted child is found in one of the following conditions, the Court may, at the instance of the other party, terminate their adoptive relationship:—

1. Where one party has ill-treated or grossly insulted the other.

2. Where one party has deserted the other in bad faith.

3. Where the adopted child has been sentenced to less than two years' imprisonment.

4. Where the adopted child has spent money wastefully.

5. Where it has been uncertain for three years whether the adopted child is alive or dead.

6. Where other grave reasons exist."

Article 1084.--"Parents have the right and the duty to protect, educate and maintain their minor children."

Article 1085.--"Parents may, within the limit of necessity, inflict punishments upon their children."

Article 1088.--"The separate property of a child is managed by the father, and, where he cannot do so, by the mother."

"The parents have the right to use, and to collect fruits from the separate property of the child, but they may not dispose of it except in the interest of the child."

Article 1089.--"The father and mother shall jointly exercise their rights and assume their duties in regard to a minor child unless it is other wise provided for by law. The rights shall be exercised by the father if the parents are not in agreement as regards the exercise of such rights; and by either parent if one of them cannot exercise such rights. Where the parents cannot assume the duties jointly, they shall be assumed by the parent who has the ability to do so."

Article 1090.--"Where the parents have abused their right over their children, their nearest ascendants or the family council may correct them, and, where such correction is of no avail, they may apply to the Court for an order suspending their right in part or in toto."

## CHAPTER V

## MAINTENANCE

Article 1114.--"The following relatives are under a mutual obligation to maintain one another:--

1. Lineal relatives by blood.

2. Spouse and the parents of the other spouse living in the same household.

3. Brothers and sisters.

4. The head and the members of a house."

Article 1115.--"In case there are several persons bound to furnish maintenance, the order in which they are to perform such obligations is as follows:--

1. Lineal descendants.

2. Lineal ascendants.

3. Head of the house.

4. Brothers and sisters.

5. Members of the house.

6. Daughter-in-law and son-in-law.

7. Parents of either spouse.

Among the lineal ascendants or lineal descendants the person nearest in degree of relationship comes first.

If there are several persons of the same degree of relationship bound to furnish maintenance, such obligation shall be borne by them according to their respective means."

Article 1116.—"In case there are several persons entitled to maintenance, and the means of the person bound to provide it is not sufficient to maintain all of them, the person to receive maintenance shall be determined in the following order:—

1. Lineal ascendants,
2. Lineal descendants,
3. Members of the house,
4. Brothers and sisters,
5. Head of the house,
6. Parents of either spouse,
7. Daughter-in-law and son-in-law.

Among lineal ascendants or lineal descendants, the person nearest in degree of relationship comes first.

Where there are several persons of the same degree of relationship entitled to maintenance, each shall receive maintenance according to his needs."

Article 1117.—"Persons entitled to maintenance are limited to those only who have no means of maintenance and have no ability to earn a living.

The aforesaid limitation in respect of inability to earn a living does not apply to the case of lineal ascendants by blood."

## BOOK V

## SUCCESSION

### CHAPTER I

### HEIRS TO PROPERTY

Article 1138.—"Heirs to property other than the spouse come in the following order:—

1. Lineal descendants by blood.
2. Parents,
3. Brothers and sisters,
4. Grand parents."

Article 1139.—"Among person of the first order provided in the preceding article, the person nearest in degree of relationship comes first as heir."

Article 1140.—"Where an heir of the first order provided in Article 1138 has died or lost the right of inheritance befor the opening of the succession, his lineal descendants shall inherit his successional portion in his place."

Article 1141.—"Where there are several heirs of the same order, they inherit in equal shares as per capita, unless it is otherwise provided by law."

Article 1142.—"The order of succession for an adopted child is the same as for a legitimate child.

The successional portion of an adopted child is one-half of that of a legitimate child, but, in case the adoptive parents have no lineal descendant by blood for their heir, his successional portion is the same as that of a legitimate child."

Article 1143.—"Where a person has no lineal descendants by blood, he may by will designate an heir to the whole or a part of his property, provided that the provisions concerning compulsory portions are not contravened."

Article 1144.—"Each spouse has the right to inherit the property of the other, and his or her successional portion is determined according to the following provisions:—

1. Where the spouse inherits concurrently with heirs of the first order, as provided in Article 1138, his or her successional portion is equal to the other heirs.

2. Where the spouse inherits concurrently with heirs of the second or third order as provided in Article 1138, his or her successional portion is one-half of the inheritance.

3. Where the spouse inherits concurrently with heirs of the fourth order as provided in Article 1138, his or her successional portion is two-thirds of the inheritnace.

4. Where there is no heir of any of the four orders provided in Article 1138, his or her successional portion is the whole of the inheritance."

Article 1145.—"A person forfeits his right to inherit in any of the following events:—

1. Where he has been sentenced to criminal penalty for having intentionally caused or attempted the death of the deceased or of a person entitled to inherit.

2. Where he has, by fraud or by duress, induced the deceased to make, annul or alter a will relating to inheritnace.

3. Where he has, by fraud or by duress, prevented the deceased from making, annulling or altering a will relating to inheritance.

4. Where he has forged, altered, concealed or destroyed the deceased's will relating to inheritance.

5. Where he seriously ill-treated or insulted the deceased and has been declared unworthy to inherit by the deceased."

"If, in the cases provided by Section 2 to 4 of the preceding paragraph, the offender has been forgiven by the deceased, his right to inherit is not forfeited."

Article 1146.—"Where the right to inherit has been infringed upon, the injured party or his statutory agent may claim its restitution."

"Such claim to restitution is extinguished if not exercised within two years from the date of discovering such infringement. The same rule applies where ten years have elapsed from the time of the opening of the succession."

TITLE III.—PARTITION OF INHERITANCE.

Article 1166.—"Where one of the heirs is a child en ventre sa mere, partition of the deceased's property by the other heirs may not take place unless the successional portion of such child has been reserved.

In regard to such partition of inheritance, the mother acts as agent of the child ventre as mere."

CHAPTER III

WILLS.

TITLE VI.—COMPULSORY PORTIONS.

Article 1223.—"The compulsory portion of an heir is determined as follows:—

1. For a lineal descendant by blood, the compulsory portion is one half of his successional portion.

2. For a parent, the compulsory portion is one half of his successional portion.

3. For a spouse, the compulsory portion is one half of his successional portion.

4. For a brother or a sister, the compulsory portion is one-third of his or her successional portion.

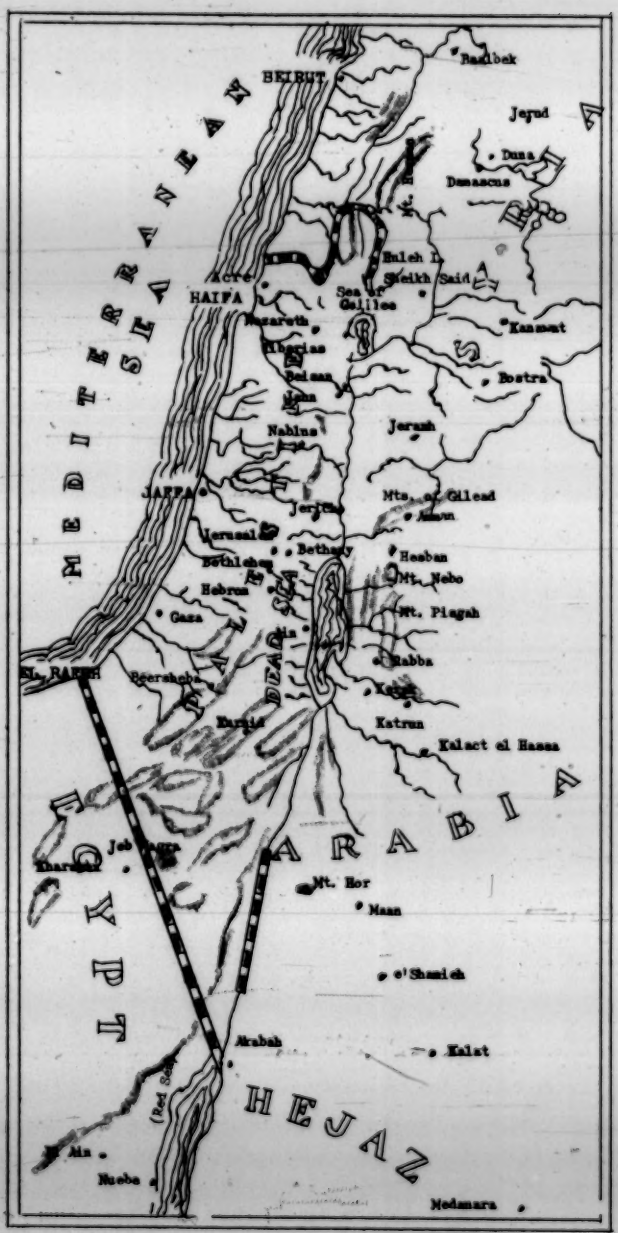
5. For a grandparent, the compulsory portion is one third of his successional portion."

publishing company inc.

# PART III

# BIBLICAL

# THE PENTATEUCH




MAP OF PALESTINE

THE TEN COMMANDMENTS

# GUIDE TO THE

# COVENANT CODE

# DEUTERONOMIC CODE

# HOLINESS CODE

# PRIESTLY CODE

The Covenant Code as a whole.

1. Laws regarding male and female slaves.
   Ex. 21:1-11.

2. Laws concerning personal injuries.
   Ex. 21:12-27.

3. Laws regarding injuries by oxen.
   Ex. 21:28 through 22:4.

4. Cases of arson and breach of trust.
   Ex. 22:5-15.

5. Sexual offenses and sins against family.
   Ex. 22:16-19.
   Deut. 22:13-19.

The Deuteronomic Code as a whole

1. Religious laws.
   Deut. 12:2 through 17:7.

2. Authorized officials.
   Deut. 16:18-20.
   Deut. 17:8 through 18:22.

3. Judicial methods.
   Deut. 19.
   Deut. 21:1-9.

4. Military rules.
   Deut. 20.

5. Family laws.
   Deut. 21:10-21.

6. Miscellaneous laws.
   Deut. 21:22—22:12.

7. Laws against unchastity.
   Deut. 22:13-30.

8. Exclusion laws.
   Deut. 23:1-8.

9. Miscellaneous ritual and philanthropic laws.
   Deut. 23:9 through 25:4.

The Covenant Code as it pertains to women.

1. Laws regarding female slaves.
   Ex. 21:1-11.

2. Laws concerning personal injuries.
   Ex. 21:15, 17, 20-27.

3. Laws regarding injuries by oxen.
   Ex. 21:28-29, 31-32.

4. Cases of breach of trust.
   Ex. 22:9-15.

5. Sexual offenses.
   Ex. 22:16-19.
   Sins against family.
   Deut. 22:13-19.

The Deuteronomic Code as it pertains to women.

1. Religious laws.
   Deut. 14:27-29;
   Deut. 15:1-6, 11-18.
   Deut. 16:1, 11-14;
   Deut. 17:2-7.

2.

3.

4. Military rules.
   Deut. 20:7.

5. Family laws.
   Deut. 21:10-21.

6. Miscellaneous laws.
   Deut. 22:5, 12.

7. Laws against unchastity.
   Deut. 22:13-30.

8. Exclusion laws.
   Deut. 23:2-4, 6-8.

9. Miscellaneous ritual and philanthropic laws.
   Deut. 23:15-20.
   Deut. 24:1-5, 7, 14-22.

10. Miscellaneous laws.
Deut. 25:5-19.

11. Ritualistic formulas.
Deut. 26:1-15.

The Holiness Code as a whole.

1. All sacrifice must take place at the sanctuary.
Lev. 17:1-9.

2. No one may eat the blood of an animal or bird.
Lev. 17:10-16; cf. 19-26.

3. The control of sexual relations.
Lev. 18:6-23.
Lev. 20:10-21.

4. Miscellaneous moral and religious laws.
Lev. 19:2-36.

5. Prohibitions of Molech-worship etc.
Lev. 20:1-9.

6. Rules to be observed by the priests.
Lev. 21:1-23.
Lev. 22:1-16.

7. Regulations regarding sacrificial animals.
Lev. 22:18-30.

8. Laws for the fixed festivals of Yahweh.
Lev. 23:10-20, 39-43.

9. Capital crimes, etc.
Lev. 24:15-22.

10. The law for the sabbatical-year.
Lev. 25:2-7, 17-22.

11. The prohibition of idolatry and sabbath-breaking.
Lev. 26:1-2; Ex. 31:13, 14A.

12. Tassels must be worn on the corners of garments.
Num. 15:38B-41.

10. Miscellaneous laws.
Deut. 25:5-12.

11.

The Holiness Code as it pertains to women.

1.

2.

3. The control of sexual relations.
Lev. 20:9-12, 14, 16-21.

4. Miscellaneous moral and religious laws.
Lev. 19:20, 29.

5.

6. Rules to be observed by the priests.
Lev. 21:1-4, 7, 9, 13, 14.

7.

8.

9. Capital crimes, etc.
Lev. 24:15-22.

10.

11.

12.

The Priestly Code proper not including the Holiness Code.

1. Construction of tabernacle, consecration of priesthood, etc.
Ex. 25:1 through 29:43.

2. Alter of incense, atonement money, sabbath, etc.
Ex. 30:1--31:11, 14B, 18A.

3. Construction and erection of the sacred tent, sabbath, and vestments.
Ex. 35:1 through 40:38.

4. Law of offerings, function of priests, their consecration and induction.
Lev. 5:7 through 10:20.

5. Rituals of cleanliness and uncleanliness in eating of animals, childbirth, leprosy, etc.
   Lev. 11:9-23, 41-44A.
   Lev. 12:1-8.
   Lev. 13:47-59.
   Lev. 14:9-53, 55.

6. Ritual for annual atonement.
   Lev. 16:1-34.

7. Punishment for blasphemy.
   Lev. 24:10-15A.

8. Laws concerning vows and tithes.
   Lev. 27:1-34.

9. Dealing with legislation enacted at Sinai in regard to men of war, priests, Levites, Nazirites, passover etc.
   Num. 1:1 through 10:1-8.

10. Legislation falling between departure from Sinai and final advance towards Canaan.
    Num. 15:1-36.
    Num. 17:1 through 19:20.

11. Relating events connected with the occupation of eastern Canaan. Second census, vows, offerings, inheritance, etc.
    Num. 25:6-16.
    Num. 26:1 through 31:54.
    Num. 34:1 through 36:13.

The Priestly Code as it pertains to women.

1.

2.

3.

4.

5.

6.

7. Punishment for blasphemy.
   Lev. 24:15.

8. Laws concerning vows and tithes.
   Lev. 27:1-7.

9. Dealing with legislation enacted at Sinai in regard to uncleanliness, trespassing, jealousy, etc.
   Num. 5:1-3, 5-7, 12-31.

10.

11. Relating events connected with the occupation of eastern Canaan. Inheritance, vows, captive women, etc.
    Num. 27:1-9, 11;
    Num. 30:1-16.
    Num. 31:1-3, 7, 9, 14-18, 21.
    Num. 36:1-13.

EXODUS.

CHAPTER XX.

10 "But the seventh day is the sabbath of the LORD thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: 12 Honor thy father and thy mother: that thy days may be long upon the land which the LORD thy God giveth thee. 13 Thou shalt not kill. 14 Thou shalt not commit adulterty. 15 Thou shalt not steal. 16 Thou shalt not bear false witness against thy neighbour. 17 Thou shalt not covet thy neighbour's house, thou shalt not covet thy neighbour's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbour's."

CHAPTER XXI.

1 "Now these are the judgments which thou shalt set before them. 2 If thou buy an Hebrew servant, six years he shall serve: and in the seventh he shall go out free for nothing. 3 If he came in by himself, he shall go out by himself: if he were married, then his wife shall go out with him. 4 If his master have given him a wife, and she have born him sons or daughters; the wife and her children shall be her master's and he shall go out by himself. 5 And if the servant shall plainly say, I love my master, my wife, and my children; I will not go out free: 6 Then his master shall bring him unto the judges; he shall also bring him to the door, or unto the door post; and his master shall bore his ear through with an aul; and he shall serve him for ever. 7 And if a man sell his daughter to be a maidservant, she shall not go out as the menservants do. 8 If she please not her master, who hath betrothed her to himself then shall he let her be redeemed: to sell her unto a strange nation he shall have no power, seeing he hath dealt deceitfully with her. 9 And if he have betrothed her unto his son, he shall deal with her after the manner of daughters. 10 If he take him another wife; her food, her raiment, and her duty of marriage, shall he not diminish. 11 And if he do not these three unto her, then shall she go out free without money. 15 And he that smiteth his father, or his mother, shall be surely put to death. 17 And he that curseth his father, or his mother, shall surely be put to death. 20 And if a man smite his servant, or his maid, with a rod, and he die under his hand; he shall be surely punished. 21 Notwithstanding, if he continue a day or two, he shall not be punished: for he is his money. 22 If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges determine. 23 And if any mischief follow, then thou shalt give life for life, 24 Eye for eye, tooth for tooth, hand for hand, foot for foot, 25 Burning for burning, wound for wound, stripe for stripe. 26 And if a man smite the eye of his servant, or the eye of his maid, that it perish; he shall let him go free for his eye's sake. 27 And if he smite out his manservant's tooth, or his maidservant's tooth; he shall let him go free for his tooth's sake. 28 If an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit. 29 But if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death. 31 Whether he have gored a son, or have gored a daughter, according to this judgment

CHAPTER XXI.

shall it be done unto him. 32 If the ox shall push a manservant or a maidservant; he shall give unto their master thirty shekels of silver, and the ox shall be stoned."

CHAPTER XXII.

9. "For all manner of trespass, whether it be for ox, for ass, for sheep, for raiment, or for any manner of lost thing, which another challengeth to be his, the cause of both parties shall come before the judges; and whom the judges shall condemn, he shall pay double unto his neighbour. 14 And if a man borrow ought of his neighbour, and it be hurt, or die, the owner thereof being not with it, he shall surely make it good. 15 But if the owner thereof be with it, he shall not make it good: if it be an hired thing, it came for his hire. 16 And if a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife. 17 If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins. 18 Thou shalt not suffer a witch to live. 19 Whosoever lieth with a beast shall surely be put to death. 22 Ye shall not afflict any widow, or fatherless child. 23 If thou afflict them in any wise, and they cry at all unto me, I will surely hear their cry; 24 And my wrath shall wax hot, and I will kill you with the sword; and your wives shall be widows, and your children fatherless. 25 If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury."

LEVITICUS.

CHAPTER XIX.

20. "And whosoever lieth carnally with a woman, that is a bondmaid, betrothed to an husband, and not at all redeemed, nor freedom given her; she shall be scourged; they shall not be put to death, because she was not free."

29. "Do not prostitute thy daughter, to cause her to be a whore; lest the land fall to whoredom, and the land become full of wickedness."

CHAPTER XX.

9. "For everyone that curseth his father or his mother shall be surely put to death: he hath cursed his father or his mother; his blood shall be upon him. 10 And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death. 11 And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them. 12 And if a man lie with his daughter in law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them. 14 And if a man take a wife and her mother, it is wickedness: they shall be burnt with fire, both he and they; that there be no wickedness among you. 16 And if a woman approach unto any beast, and lie down thereto, thou shalt kill the woman, and the beast: they shall surely be put to death; their blood shall be upon them. 17 And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness, and she see his nakedness; it is a wicked thing; and they shall be cut off in the sight of their people: he hath uncovered his sister's nakedness; he shall bear his iniquity. 18 And if a man shall lie with a woman having her sickness, and shall uncover her nakedness; he hath discovered her fountain, and she hath uncovered the fountain of her blood: and both of them shall be cut off

from among their people. 19 And thou shalt not uncover the nakedness of thy mother's sister, nor of thy father's sister: for he uncovereth his near kin: they shall bear their iniquity. 20 And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness: they shall bear their sin; they shall die childless. 21 And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness; they shall be childless. 22 Ye shall therefore keep all my statutes, and all my judgments, and do them: that the land, whither I bring you to dwell therein, spue you not out. 23 And ye shall not walk in the manners of the nation, which I cast out before you: for they committed all these things, and therefore I abhorred them. 27 A man also or woman that hath a familiar spirit, or that is a wizard, shall surely be put to death; they shall stone them with stones: their blood shall be upon them."

CHAPTER XXI.

1 "And the LORD said unto Moses, Speak unto the priests the sons of Aaron, and say unto them, There shall none be defiled for the dead among his people: 2 But for his kin, that is near unto him, that is, for his mother, and for his father, and for his son, and for his daughter, and for his brother, 3 And for his sister a virgin, that is nigh unto him, which hath had no husband; for her may he be defiled. 4 But he shall not defile himself, being a chief man among his people, to profane himself. 7 They shall not take a wife that is a whore, or profane; neither shall they take a woman put away from her husband: for he is holy unto his God. 9 And the daughter of any priest, if she profane herself by playing the whore, she profaneth her father: she shall be burnt with fire. 13 And he shall take a wife in her virginity. 14 A widow, or a divorced woman, or profane, or an harlot, these shall he not take: but he shall take a virgin of his own people to wife."

CHAPTER XXIV.

15 "And thou shalt speak unto the children of Israel, saying, Whosoever curseth his God shall bear his sin. 16 And he that blasphemeth the name of the Lord, he shall surely be put to death, and all the congregation shall certainly stone him: as well the stranger, as he that is born in the land, when he blasphemeth the name of the Lord, shall be put to death. 17 And he that killeth any man shall surely be put to death. 18 And he that killeth a beast shall make it good; beast for beast. 19 And if a man cause a blemish in his neighbour; as he hath done, so shall it be done to him; 20 Breach for breach, eye for eye, tooth for tooth: as he hath caused a blemish in a man, so shall it be done to him again. 21 And he that killeth a beast, he shall restore it: and he that killeth a man, he shall be put to death. 22 Ye shall have one manner of law, as well for the stranger, as for one of your own country: for I am the Lord your God. 23 And Moses spake to the children of Israel, that they should bring forth him that had cursed out of the camp, and stone him with stones. And the children of Israel did as the Lord commanded Moses."

CHAPTER XXV.

39 "And if thy brother that dwelleth by thee be waxen poor, and be sold unto thee; thou shalt not compel him to serve as a bondservant: 40 But as an hired servant, and as a sojourner, he shall be with thee, and shall serve thee unto the year of jubile: 41 And then shall he depart from thee, both he and his children with him, and shall return unto his own family, and unto the possession of his fathers shall he return. 42 For they are my servants, which I brought forth out of the land of Egypt: they shall not be sold as bondmen. 43. Thou shalt not rule over him with rigour; but shall fear thy God. 44 Both thy bondmen, and thy bondmaids,

from among their people. 19 And thou shalt not uncover the nakedness of thy mother's sister, nor of thy father's sister: for he uncovereth his near kin: they shall bear their iniquity. 20 And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness: they shall bear their sin; they shall die childless. 21 And if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness; they shall be childless. 22 Ye shall therefore keep all my statutes, and all my judgments, and do them: that the land, whither I bring you to dwell therein, spue you not out. 23 And ye shall not walk in the manners of the nation, which I cast out before you: for they committed all these things, and therefore I abhorred them. 24 But I said unto you, Ye shall possess their land, and I will give it unto you to possess it, a land that floweth with milk and honey: I am the LORD your God, which have separated you from other people. 25 Ye shall therefore put difference between clean beasts and unclean, and between unclean fowls and clean: and ye shall not make your souls abominable by beast or by fowl or by any manner of living thing that creepeth on the ground, which I have separated from you as unclean. 26 And ye shall be holy unto me: for I the LORD am holy, and have severed you from other people, that ye should be mine.

## CHAPTER XXI.

1 And the LORD said unto Moses, Speak unto the priests the sons of Aaron, and say unto them, There shall none be defiled for the dead among his people: 2 But for his kin, that is near unto him, that is, for his mother, and for his father, and for his son, and for his daughter, and for his brother, 3 And for his sister a virgin, that is nigh unto him, which hath had no husband; for her may he be defiled. 4 But he shall not defile himself, being a chief man among his people, to profane himself. 5 They shall not make baldness upon their head, neither shall they shave off the corner of their beard, nor make any cuttings in their flesh. 6 They shall be holy unto their God, and not profane the name of their God: for the offerings of the LORD made by fire, and the bread of their God, they do offer: therefore they shall be holy. 7 They shall not take a wife that is a whore, or profane; neither shall they take a woman put away from her husband: for he is holy unto his God. 8 And the daughter of any priest, if she profane herself by playing the whore, she profaneth her father: she shall be burnt with fire. 9 And he shall take a wife in her virginity. 10 A widow, or a divorced woman, or profane, or an harlot, these shall he not take but he shall take a virgin of his own people to wife.

## CHAPTER XXIV.

10 And there went out a man of the children of Israel, whose mother's name was Shelomith, the daughter of Dibri, of the tribe of Dan: 11 And the Israelitish woman's son blasphemed the name of the LORD, and cursed. And they brought him unto Moses: (and his mother's name was Shelomith, the daughter of Dibri, of the tribe of Dan:) 12 And they put him in ward, that the mind of the LORD might be shewed them. 13 And the LORD spake unto Moses, saying, 14 Bring forth him that hath cursed without the camp; and let all that heard him lay their hands upon his head, and let all the congregation stone him. 15 And thou shalt speak unto the children of Israel, saying, Whosoever curseth his God shall bear his sin. 16 And he that blasphemeth the name of the LORD, he shall surely be put to death, and all the congregation shall certainly stone him: as well the stranger, as he that is born in the land, when he blasphemeth the name of the LORD, shall be put to death. 17 And he that killeth any man shall surely be put to death. 18 And he that killeth a beast shall make it good; beast for beast. 19 And if a man cause a blemish in his neighbour; as he hath done, so shall it be done to him; 20 Breach for breach, eye for eye, tooth for tooth: as he hath caused a blemish in a man, so shall it be done to him again. 21 And he that killeth a beast, he shall restore it: and he that killeth a man, he shall be put to death. 22 Ye shall have one manner of law, as well for the stranger, as for one of your own country: for I am the LORD your God. 23 And Moses spake to the children of Israel, that they should bring forth him that had cursed out of the camp, and stone him with stones. And the children of Israel did as the LORD commanded Moses.

## CHAPTER XXV.

39 And if thy brother that dwelleth by thee be waxen poor, and be sold unto thee; thou shalt not compel him to serve as a bondservant: 40 But as an hired servant, and as a sojourner, he shall be with thee, and shall serve thee unto the year of jubilee: 41 And then shall he depart from thee, both he and his children with him, and shall return unto his own family, and unto the possession of his fathers shall he return. 42 For they are my servants, which I brought forth out of the land of Egypt: they shall not be sold as bondmen. 43 Thou shalt not rule over him with rigour; but shalt fear thy God. 44 Both thy bondmen, and thy bondmaids,

which thou shalt have, shall be of the heathen that are round about you; of them shall ye buy bondmen and bondmaids. 45 Moreover of the children of the strangers that do sojourn among you, of them shall ye buy, and of their families that are with you, which they begat in your land: and they shall be your possession. 46 And ye shall take them as an inheritance for your children after you, to inherit them for a possession; they shall be your bondmen for ever: but over your brethren the children of Israel, ye shall not rule one over another with rigour. 47 And if a sojourner or stranger wax rich by thee, and thy brother that dwelleth by him wax poor, and sell himself unto the stranger or sojourner by thee, or to the stock of the stranger's family: 48 After that he is sold he may be redeemed again; one of his brethren may redeem him: 49 Either his uncle, or his uncle's son, may redeem him, or any that is nigh of kin unto him of his family may redeem him; or if he be able, he may redeem himself. 50 And he shall reckon with him that bought him from the year that he was sold to him unto the year of jubile: and the price of his sale shall be according unto the number of years, according to the time of an hired servant shall it be with him. 53 And as a yearly hired servant shall he be with him: and the other shall not rule with rigour over him in thy sight. 54 And if he be not redeemed in these years, then he shall go out in the year of jubile, both he, and his children with him. 55 For unto me the children of Israel are servants; they are my servants whom I brought forth out of the land of Egypt: I am the LORD your God."

CHAPTER XXVII.

1 "And the LORD spake unto Moses, saying, 2 Speak unto the children of Israel, and say unto them, When a man shall make a singular vow, the persons shall be for the Lord by thy estimation. 3 And thy estimation shall be of the male from twenty years old even unto sixty years old, even thy estimation shall be fifty shekels of silver, after the shekel of the sanctuary. 4 And if it be a female, then thy estimation shall be thirty shekels. 5 And if it be from five years old even unto twenty years old, then thy estimation shall be of the male twenty shekels, and for the female ten shekels. 6 And if it be from a month old even unto five years old, then thy estimation shall be of the male five shekels of silver, and for the female thy estimation shall be three shekels of silver. 7. And if it be from sixty years old and above; if it be a male, then thy estimation shall be fifteen shekels, and for the female ten shekels."

NUMBERS.

CHAPTER V.

1 "And the LORD spake unto Moses, saying, 2 Command the children of Israel, that they put out of the camp every leper, and every one that hath an issue, and whosoever is defiled by the dead: 3 Both male and female shall ye put out, without the camp shall ye put them; that they defile not their camps, in the midst whereof I dwell. 5 And the LORD spake unto Moses, saying, 6 Speak unto the children of Israel, When a man or woman shall commit any sin that men commit, to do a trespass against the LORD, and that person be guilty; 7 Then they shall confess their sin which they have done: and he shall recompense his trespass with the principal thereof, and add unto it the fifth part thereof, and give it unto him against whom he hath trespassed. 12 Speak unto the children of Israel, and say unto them, If any man's wife go aside and commit a trespass against him, 13 And a man lie with her carnally, and it be hid from the eyes of her husband, and be kept close, and she be defiled, and there be no witness against her, neither she be taken with the manner; 14 And the spirit of jealousy come upon him, and he be

CHAPTER XXVII.

1 "And the LORD spoke unto Moses, saying, 2 Speak unto the children of Israel, and say unto them, When a man shall make a singular vow, the persons shall be for the Lord by thy estimation. 3 And thy estimation shall be of the male from twenty years old even unto sixty years old, even thy estimation shall be fifty shekels of silver, after the shekel of the sanctuary. 4 And if it be a female, then thy estimation shall be thirty shekels. 5 And if it be from five years old even unto twenty years old, then thy estimation shall be of the male twenty shekels, and for the female ten shekels. 6 And if it be from a month old even unto five years old, then thy estimation shall be of the male five shekels of silver, and for the female thy estimation shall be three shekels of silver. 7 And if it be from sixty years old and above; if it be a male, then thy estimation shall be fifteen shekels, and for the female ten shekels."

REMARKS.

CHAPTER X.

1 "And the LORD spoke unto Moses, saying, 2 Command the children of Israel, that they put out of the camp every leper, and every one that hath an issue, and whosoever is defiled by the dead: 3 both male and female shall ye put out, without the camp shall ye put them that they defile not their camps, in the midst whereof I dwell. 5 And the LORD spake unto Moses, saying, 6 Speak unto the children of Israel, When a man or woman shall commit any sin that men commit, to do a trespass against the LORD, and that person be guilty; 7 Then they shall confess their sin which they have done: and he shall recompense his trespass with the principal thereof, and add unto it the fifth part thereof, and give it unto him against whom he hath trespassed. 12 Speak unto the children of Israel, and say unto them, If any man's wife go aside and commit a trespass against him, 13 And a man lie with her carnally, and it be hid from the eyes of her husband, and be kept close, and she be defiled, and there be no witness against her, neither she be taken with the manner; 14 And the spirit of jealousy come upon him, and he be

which thou canst bless, shall be of the heathen that are round about you; of them shall ye buy bondmen and bondmaids. 45 Moreover of the children of the strangers that do sojourn among you, of them shall ye buy, and of their family that are with you, which they begat in your land: and they shall be your possession. 46 And ye shall take them as an inheritance for your children after you, to inherit them for a possession; they shall be your bondmen for ever: but over your brethren the children of Israel, ye shall not rule one over another with rigour. 47 And if a sojourner or stranger wax rich by thee, and thy brother that dwelleth by him wax poor, and sell himself unto the stranger or sojourner by thee, or to the stock of the stranger's family: 48 After that he is sold he may be redeemed again; one of his brethren may redeem him: 49 Either his uncle, or his uncle's son, may redeem him, or any that is nigh of kin unto him of his family may redeem him; or if he be able, he may redeem himself. 50 And he shall reckon with him that bought him from the year that he was sold to him unto the year of Jubile: and the price of his sale shall be according unto the number of years, according to the time of an hired servant shall it be with him. 53 And as a yearly hired servant shall he be with him: and the other shall not rule with rigour over him in thy sight. 54 And if he be not redeemed in these years, then he shall go out in the year of Jubile, both he, and his children with him. 55 For unto me the children of Israel are servants; they are my servants whom I brought forth out of the land of Egypt: I am the LORD, your God."

jealous of his wife, and she be defiled: or if the spirit of jealousy come upon him, and he be jealous of his wife, and she be not defiled: 15 Then shall the man bring his wife unto the priest, and he shall bring her offering for her, the tenth part of an ephah of barley meal; he shall pour no oil upon it, nor put frankincense thereon; for it is an offering of jealousy, an offering of memorial, bringing iniquity to remembrance. 16 And the priest shall bring her near, and set her before the LORD: 17 And the priest shall take holy water in an earthen vessel; and of the dust that is in the floor of the tabernacle the priest shall take, and put it into the water: 18 And the priest shall set the woman before the LORD, and uncover the woman's head, and put the offering of memorial in her hands, which is the jealousy offering: and the priest shall have in his hand the bitter water that causeth the curse: 19 And the priest shall charge her by an oath, and say unto the woman, If no man have lain with thee, and if thou hast not gone aside to uncleanness with another instead of thy husband, be thou free from this bitter water that causeth the curse: 20 But if thou hast gone aside to another instead of thy husband, and if thou be defiled, and some man have lain with thee beside thine husband: 21 Then the priest shall charge the woman with an oath of cursing, and the priest shall say unto the woman, The LORD make thee a curse and an oath among thy people, when the LORD doth make thy thigh to rot, and thy belly to swell; 22 And this water that causeth the curse shall go into thy bowels, to make thy belly to swell, and thy thigh to rot: And the woman shall say Amen, amen. 23 And the priest shall write these curses in a book, and he shall blot them out with the bitter water: 24 And he shall cause the woman to drink the bitter water that causeth the curse: and the water that causeth the curse shall enter into her, and become bitter. 25 Then the priest shall take the jealousy offering out of the woman's hand, and shall wave the offering before the LORD, and offer it upon the altar: 26 And the priest shall take an handfull of the offering, even the memorial thereof, and burn it upon the altar, and afterward shall cause the woman to drink the water 27 And when he hath made her to drink the water, then it shall come to pass, that, if she be defiled, and have done trespass against her husband, that the water that causeth the curse shall enter into her, and become bitter, and her belly shall swell, and her thigh shall rot: and the woman shall be a curse among her people. 28 And if the woman be not defiled, but be clean; then she shall be free, and shall conceive seed. 29 This is the law of jealousies, when a wife goeth aside to another instead of her husband, and is defiled; 30 Or when the spirit of jealousy cometh upon him, and he be jealous over his wife, and shall set the woman before the LORD, and the priest shall execute upon her all this law. 31 Then shall the man be guiltless from iniquity, and this woman shall bear her iniquity."

## CHAPTER XXVII.

1. "Then came the daughter of Zelophehad, the son of Hepher, the son of Gilead, the son of Machir, the son of Manasseh, of the families of Manasseh the son of Joseph: and these are the names of his daughters: Mahlah, Noah, and Hoglah, and Milcah, and Tirzah. 2 And they stood before Moses, and before Eleazar the priest, and before the princes and all the congregation, by the door of the tabernacle of the congregation, saying, 3 Our father died in the wilderness, and he was not in the company of them that gathered themselves together against the LORD in the company of Korah; but died in his own sin, and had no sons. 4 Why should the name of our father be done away from among his family, because he hath no son? Give unto us therefore a possession among the brethren of our father. 5 And Moses brought their cause before the LORD. 6 And the LORD spake unto Moses, saying, 7 The daughters of Zelophehad speak right: thou shalt surely give them a possession of an inheritance among their father's brethren; and thou shalt cause the inheritance of their father to pass unto them. 8 And thou shalt speak unto the children of Israel, saying, If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter. 9 And if he have no daughter, then ye shall give his

jealousy of his wife, and she be defiled, or if the spirit of jealousy
come upon him, and he be jealous of his wife, and she be defiled:
or if the spirit of jealousy come upon him, and he be jealous of his wife,
and the woman be defiled,

inheritance unto his brethren: 11 And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it: and it shall be unto the children of Israel a statute of judgment, as the LORD commanded Moses."

## CHAPTER XXX.

1 "And Moses spake unto the heads of the tribes concerning the children of Israel, saying, This is the thing which the LORD hath commanded. 2 If a man vow a vow unto the LORD, or swear an oath to bind his soul with a bond; he shall not break his word, he shall do according to all that proceedeth out of his mouth. 3 If a woman also vow a vow unto the LORD, and bind herself by a bond, being in her father's house in her youth; 4 And her father hear her vow, and her bond wherewith she hath bound her soul, and her father shall hold his peace at her: then all her vows shall stand, and every bond wherewith she hath bound her soul shall stand. 5 But if her father disallow her in the day that he heareth; not any of her vows, or of her bonds wherewith she hath bound her soul, shall stand: and the LORD shall forgive her, because her father disallowed her. 6 And if she had at all an husband, when she vowed, or uttered ought out of her lips, wherewith she bound her soul; 7 And her husband heard it, and held his peace at her in the day that he heard it; then her vows shall stand, and her bonds wherewith she bound her soul shall stand. 8 But if her husband disallowed her on the day that he heard it; then he shall make her vow which she vowed, and that which she uttered with her lips, wherewith she bound her soul, of none effect: and the LORD shall forgive her. 9 But every vow of a widow, and of her that is divorced, wherewith they have bound their souls, shall stand against her. 10 And if she vowed in her husband's house, or bound her soul by a bond with an oath; 11 And her husband heard it, and held his peace at her, and disallowed her not: then all her vows shall stand, and every bond wherewith she bound her soul shall stand. 12 But if her husband hath utterly made them void on the day he heard them; then whatsoever proceeded out of her lips concerning her vows, or concerning the bond of her soul, shall not stand: her husband hath made them void; and the LORD shall forgive her. 13 Every vow, and every binding oath to afflict the soul, her husband may establish it, or her husband may make it void. 14 But if her husband altogether hold his peace at her from day to day; then he establisheth all her vows, or all her bonds, which are upon her: he confirmeth them, because he held his peace at her in the day that he heard them. 15 But if he shall anyways make them void after that he hath heard them; then he shall bear her iniquity. 16 These are the statutes, which the LORD commanded Moses, between a man and his wife, between the father and his daughter, being yet in her youth in her father's house."

## CHAPTER XXXI.

1 "And the LORD spake unto Moses, saying, 2 Avenge the children of Israel of the Midianites: afterward shalt thou be gathered unto thy people. 3 And Moses spake unto the people, saying, Arm some of yourselves unto the war, and let them go against the Midianites, and avenge the LORD of Midian. 7 And they warred against the Midianites, as the LORD commanded Moses; and they slew all the males. 8 And the children of Israel took all the women of Midian captives, and their little ones, and took the spoil of all their cattle, and all their flocks, and all their goods. 14 And Moses was wroth with the officers of the host, with the captains over thousands, and captains over hundreds, which came from the battle. 15 And Moses said unto them, Have ye saved all the women alive? 16 Behold, these caused the children of Israel, through the counsel of Balaam, to commit trespass against the LORD in the matter of Peor, and there was a plague among the congregation of the LORD. 17 Now therefore kill every male among the little ones, and kill every woman that hath known man by lying with him. 18 But all the women children, that have not known a man by lying with him, keep alive for yourselves. 21 And Eleazar the priest said unto the

inheritance unto his brethren. 11 And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it: and it shall be unto the children of Israel a statute of judgment, as the LORD commanded Moses."

## CHAPTER XXX.

1 "And Moses spake unto the heads of the tribes concerning the children of Israel, saying, This is the thing which the LORD hath commanded. 2 If a man vow a vow unto the LORD, or swear an oath to bind his soul with a bond; he shall not break his word, he shall do according to all that proceedeth out of his mouth. 3 If a woman also vow a vow unto the LORD, and bind herself by a bond, being in her father's house in her youth; 4 And her father hear her vow, and her bond wherewith she hath bound her soul, and her father shall hold his peace at her: then all her vows shall stand, and every bond wherewith she hath bound her soul shall stand. 5 But if her father disallow her in the day that he heareth; not any of her vows, or of her bonds wherewith she hath bound her soul, shall stand: and the LORD shall forgive her, because her father disallowed her. 6 And if she had at all an husband, when she vowed, or uttered aught out of her lips, wherewith she bound her soul; 7 And her husband heard it, and held his peace at her in the day that he heard it: then her vows shall stand, and her bonds wherewith she bound her soul shall stand. 8 But if her husband disallowed her on the day that he heard it; then he shall make her vow which she vowed, and that which she uttered with her lips, wherewith she bound her soul, of none effect: and the LORD shall forgive her. 9 But every vow of a widow, and of her that is divorced, wherewith they have bound their soul, shall stand against her. 10 And if she vowed in her husband's house, or bound her soul by a bond with an oath; 11 And her husband heard it, and held his peace at her, and disallowed her not: then all her vows shall stand, and every bond wherewith she bound her soul shall stand. 12 But if her husband hath utterly made them void on the day he heard them; then whatsoever proceeded out of her lips concerning her vows, or concerning the bond of her soul, shall not stand: her husband hath made them void; and the LORD shall forgive her. 13 Every vow, and every binding oath to afflict the soul, her husband may establish it, or her husband may make it void. 14 But if her husband altogether hold his peace at her from day to day; then he establisheth all her vows, or all her bonds, which are upon her: he confirmeth them, because he held his peace at her in the day that he heard them. 15 But if he shall anyway make them void after that he hath heard them; then he shall bear her iniquity." 16 These are the statutes, which the LORD commanded Moses, between a man and his wife, between the father and his daughter, being yet in her youth in her father's house."

## CHAPTER XXXI.

1 "And the LORD spake unto Moses, saying, 2 Avenge the children of Israel of the Midianites: afterward shalt thou be gathered unto thy people. 3 And Moses spake unto the people, saying, Arm some of yourselves unto the war, and let them go against the Midianites, and avenge the LORD of Midian. 4 And they warred against the Midianites, as the LORD commanded Moses; and they slew all the males. 5 AND the children of Israel took all the women of Midian captives, and their little ones, and took the spoil of all their cattle, and all their flocks, and all their goods. 6 And Moses sent them to the warfare, with the captains over thousands, and captains over hundreds, which came from the battle. 7 And Moses said unto them, Have ye saved all the women alive? 8 Behold, these caused the children of Israel, through the counsel of Balaam, to commit trespass against the LORD in the matter of Peor, and there was a plague among the congregation of the LORD. 9 Now therefore kill every male among the little ones, and kill every woman that hath known a man by lying with him. 10 But all the women children, that have not known a man by lying with him, keep alive for yourselves. 11 And Eleazar the priest said unto the

men of war which went to the battle, This is the ordinance of the law which the LORD commanded Moses."

CHAPTER XXXVI.

1 "And the chief fathers of the families of the children of Gilead, the son of Machir, the son of Manasseh, of the families of the sons of Joseph, came near, and spake before Moses, and before the princes, the chief fathers of the children of Israel: 2 And they said, The LORD commanded my lord to give the land for an inheritance by lot to the children of Israel: and my lord was commanded by the LORD to give the inheritance of Zelophehad our brother unto his daughters. 3 And if they be married to any of the sons of the other tribes of the children of Israel, then shall their inheritance be taken from the inheritance of our fathers, and shall be put to the inheritance of the tribe whereunto they are received: so shall it be taken from the lot of our inheritance. 4 And when the jubile of the children of Israel shall be, then shall their inheritance be put unto the inheritance of the tribe whereunto they are received: so shall their inheritance be taken away from the inheritance of the tribe of our fathers. 5 And Moses commanded the children of Israel according to the word of the LORD, saying, The tribe of the sons of Joseph hath said well. 6 This is the thing which the LORD doth command concerning the daughters of Zelophehad, saying, Let them marry to whom they think best; only to the family of the tribe of their father shall they marry. 7 So shall not the inheritance of the children of Israel remove from tribe to tribe: for every one of the children of Israel shall keep himself to the inheritance of the tribe of his fathers. 8 And every daughter, that possesseth an inheritance in any tribe of the children of Israel, shall be wife unto one of the family of the tribe of her father, that the children of Israel may enjoy every man the inheritance of his fathers. 9 Neither shall the inheritance remove from one tribe to another tribe; but every one of the tribes of the children of Israel shall keep himself to his own inheritance. 10 Even as the LORD commanded Moses, so did the daughters of Zelophehad: 11 For Mahlah, Tirzah, and Hoglah, and Milcah, and Noah, the daughters of Zelophehad, were married unto their father's brothers' sons: 12 And they were married into the families of the sons of Manasseh the son of Joseph, and their inheritance remained in the tribe of the family of their father. 13 These are the commandments and the judgments, which the LORD commanded by the hand of Moses unto the children of Israel in the plains of Moab by Jordon near Jericho."

DEUTERONOMY.

CHAPTER XIV.

27. "And the Levite that is within thy gates; thou shalt not forsake him; for he hath no part nor inheritance with thee. 28 At the end of three years thou shalt bring forth all the tithe of thine increase the same year, and shalt lay it up within thy gates: 29 And the Levite (because he hath no part nor inheritance with thee,) and the stranger, and the fatherless, and the widow, which are within thy gates, shall come, and shall eat and be satisfied; that the LORD thy God may bless thee in all the work of thine hand which thou doest."

CHAPTER XV.

1. "At the end of every seven years thou shalt make a release. 2 And this is the manner of the release: Every creditor that lendeth ought unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the LORD'S release. 3 Of a foreigner thou mayest exact it again: but that which is thine with thy brother thine hand shall release; 4 Save when there shall be no poor among you; for the

CHAPTER XXXVI.

1. "And the chief rulers of the families of the children of Gilead, the son of Machir, the son of Manasseh, of the families of the sons of Joseph, came near, and spake before Moses, and before the princes, the chief fathers of the children of Israel: 2. And they said, The Lord commanded my lord to give the land for an inheritance by lot to the children of Israel: and my lord was commanded by the LORD to give the inheritance of Zelophehad our brother unto his daughters. 3. And if they be married to any of the sons of the other tribes of the children of Israel, then shall their inheritance be taken from the inheritance of our fathers, and shall be put to the inheritance of the tribe whereunto they are received: so shall it be taken from the lot of our inheritance. 4 And when the Jubile of the children of Israel shall be, then shall their inheritance be put unto the inheritance of the tribe whereunto they are received: so shall their inheritance be taken away from the inheritance of the tribe of our fathers." 5 And Moses commanded the children of Israel according to the word of the LORD, saying, The tribe of the sons of Joseph hath said well. 6 This is the thing which the LORD doth command concerning the daughters of Zelophehad, saying, Let them marry to whom they think best only to the family of the tribe of their father shall they marry. 7 So shall not the inheritance of the children of Israel remove from tribe to tribe: for every one of the children of Israel shall keep himself to the inheritance of the tribe of his fathers. 8 And every daughter, that possesseth an inheritance in any tribe of the children of Israel, shall be wife unto one of the family of the tribe of her father, that the children of Israel may enjoy every man the inheritance of his fathers. 9 Neither shall the inheritance remove from one tribe to another tribe; but every one of the tribes of the children of Israel shall keep himself to his own inheritance. 10 Even as the LORD commanded Moses, so did the daughters of Zelophehad: 11 For Mahlah, Tirzah, and Hoglah, and Milcah, and Noah, the daughters of Zelophehad, were married unto their father's brothers' sons: 12 And they were married into the families of the sons of Manasseh the son of Joseph, and their inheritance remained in the tribe of the family of their father. 13 These are the commandments and the judgments, which the LORD commanded by the hand of Moses unto the children of Israel in the plains of Moab by Jordan near Jericho."

DEUTERONOMY.

CHAPTER XIV.

17. "And the Jevite that is within thy gates thou shalt not forsake; for he hath no part nor inheritance with thee. 28 At the end of three years thou shalt bring forth all the tithe of thine increase the same year, and shalt lay it up within thy gates. 29 And the Levite (because he hath no part nor inheritance with thee,) and the stranger, and the fatherless, and the widow, which are within thy gates, shall come, and shall eat and be satisfied; that the LORD thy God may bless thee in all the work of thine hand which thou doest."

CHAPTER XV.

1. "At the end of every seven years thou shalt make a release. 2 And this is the manner of the release: Every creditor that lendeth ought unto his neighbour shall release it; he shall not exact it of his neighbour, or of his brother; because it is called the LORD'S release. 3 Of a foreigner thou mayest exact it again: but that which thy brother hath with thee thine hand shall release; 4 Save when there shall be no poor among you; for the

LORD shall greatly bless thee in the land which the LORD thy God giveth thee for an inheritance to possess it: 5 Only if thou carefully hearken unto the voice of the LORD thy God, to observe to do all these commandments which I command thee this day. 6 For the LORD thy God blesseth thee, as he promised thee: and thou shalt lend unto many nations, but thou shalt not borrow; and thou shalt reign over many nations, but they shall not reign over thee. 11 For the poor shall never cease out of the land: therefore I command thee, saying, Thou shalt open thine hand wide unto thy brother, to thy poor, and to thy needy, in thy land. 12 And if thy brother an Hebrew man, or an Hebrew woman, be sold unto thee, and serve thee six years; then in the seventh year thou shalt let him go free from thee. 13 And when thou sendest him out free from thee, thou shalt not let him go away empty: 14 Thou shalt furnish him liberally out of thy flock, and out of thy floor, and out of thy winepress: of that wherewith the LORD thy God hath blessed thee thou shalt give unto him. 15 And thou shalt remember that thou wast a bondman in the land of Egypt, and the LORD thy God redeemed thee: therefore I command thee this thing to day. 16 And it shall be, if he say unto thee, I will not go away from thee; because he loveth thee and thine house, because he is well with thee; 17 Then thou shalt take an aul, and thrust it through his ear unto the door, and he shall be thy servant for ever. And also unto thy maidservant thou shalt do likewise. 18 It shall not seem hard unto thee, when thou sendest him away free from thee; for he hath been worth a double hired servant to thee, in serving thee six years: and the LORD thy God shall bless thee in all that thou doest."

CHAPTER XVI.

1. "Observe the month of Abib, and keep the passover unto the LORD thy God: for in the month of Abib the LORD thy God brought thee forth out of Egypt by night. 11 And thou shalt rejoice before the LORD thy God, thou and thy son, and thy daughter, and thy manservant, and thy maidservant, and the Levite that is within thy gates, and the stranger, and the fatherless, and the widow, that are among you, in the place which the LORD thy God hath chosen to place his name there. 12 And thou shalt remember that thou wast a bondman in Egypt: and thou shalt observe and do these statutes. 13 Thou shalt observe the feast of tabernacles seven days, after that thou hast gathered in thy corn and thy wine: 14 And thou shalt rejoice in thy feast, thou, and thy son, and thy daughter, and thy manservant, and thy maidservant, and the Levite, the stranger, and the fatherless, and the widow, that are within thy gates."

CHAPTER XVII.

2. "If there be found among you, within any of thy gates which the LORD thy God giveth thee, man or woman, that hath wrought wickedness in the sight of the LORD thy God, in transgressing his covenant, 3 And hath gone and served other gods, and worshipped them, either the sun, or moon, or any of the host of heaven, which I have not commanded; 4 And it be told thee, and thou hast heard of it, and enquired diligently, and, behold, it be true and the thing certain, that such abomination is wrought in Israel: 5 Then shalt thou bring forth that man or that woman, which have committed that wicked thing, unto thy gates, even that man or that woman, and shalt stone them with stones, till they die. 6 At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death. 7 The hands of the witnesses shall be first upon him to put him to death, and afterward the hands of all the people. So thou shalt put the evil away from among you."

CHAPTER XX.

7. "And what man is there that hath betrothed a wife, and hath not taken her? let him go and return unto his house, lest he die in the battle, and another man take her."

LORD shall greatly bless thee in the land which the LORD thy God giveth
thee for an inheritance to possess it: 5 Only if thou carefully hearken
unto the voice of the LORD thy God, to observe and to do all these command-
ments which I command thee this day. 6 For the LORD thy God blesseth
thee, as he promised thee: and thou shalt lend unto many nations, but thou
shalt not borrow; and thou shalt reign over many nations, but they shall
not reign over thee. 7 If there be among you a poor man of one of thy
brethren within any of thy gates in thy land which the LORD thy God giveth
thee, thou shalt not harden thine heart, nor shut thine hand from thy poor
brother: 8 But thou shalt open thine hand wide unto him, and shalt surely
lend him sufficient for his need, in that which he wanteth. 9 Beware that
there be not a thought in thy wicked heart, saying, The seventh year, the
year of release, is at hand; and thine eye be evil against thy poor brother,
and thou give him nought; and he cry unto the LORD against thee, and it be
sin unto thee. 10 Thou shalt surely give him, and thine heart shall not be
grieved when thou givest unto him: because that for this thing the LORD thy
God shall bless thee in all thy works, and in all that thou puttest thine
hand unto. 11 For the poor shall never cease out of the land: therefore I
command thee, saying, Thou shalt open thine hand wide unto thy
brother, to thy poor, and to thy needy, in thy land. 12 And if thy brother
an Hebrew man, or an Hebrew woman, be sold unto thee, and serve thee six
years; then in the seventh year thou shalt let him go free from thee. 13
And when thou sendest him out free from thee, thou shalt not let him go
away empty: 14 Thou shalt furnish him liberally out of thy flock, and out
of thy floor, and out of thy winepress: of that wherewith the LORD thy
God hath blessed thee thou shalt give unto him. 15 And thou shalt remember
that thou wast a bondman in the land of Egypt, and the LORD thy God re-
deemed thee: therefore I command thee this thing to day. 16 And it shall
be, if he say unto thee, I will not go away from thee; because he loveth
thee and thine house, because he is well with thee; 17 Then thou shalt
take an awl, and thrust it through his ear unto the door, and he shall be
thy servant for ever. And also unto thy maidservant thou shalt do like-
wise. 18 It shall not seem hard unto thee, when thou sendest him away
free from thee; for he hath been worth a double hired servant to thee, in
serving thee six years: and the LORD thy God shall bless thee in all that
thou doest.

## CHAPTER XVI.

1 "Observe the month of Abib, and keep the passover unto the LORD
thy God: for in the month of Abib the LORD thy God brought thee forth out
of Egypt by night. 2 And thou shalt therefore sacrifice the passover unto
the LORD thy God, of the flock and the herd, in the place which the LORD shall
choose to place his name there. 3 Thou shalt eat no leavened bread with it;
seven days shalt thou eat unleavened bread therewith, even the bread of
affliction; for thou camest forth out of the land of Egypt in haste: that
thou mayest remember the day when thou camest forth out of the land of
Egypt all the days of thy life. 4 And there shall be no leavened bread seen
with thee in all thy coast seven days; neither shall there any thing of the
flesh, which thou sacrificedst the first day at even, remain all night until
the morning. 5 Thou mayest not sacrifice the passover within any of thy
gates, which the LORD thy God giveth thee: 6 But at the place which the
LORD thy God shall choose to place his name in, there thou shalt sacrifice
the passover at even, at the going down of the sun, at the season that thou
camest forth out of Egypt. 7 And thou shalt roast and eat it in the place
which the LORD thy God shall choose: and thou shalt turn in the morning,
and go unto thy tents. 8 Six days thou shalt eat unleavened bread: and on
the seventh day shall be a solemn assembly to the LORD thy God: thou shalt
do no work therein. 9 Seven weeks shalt thou number unto thee: begin to
number the seven weeks from such time as thou beginnest to put the sickle
to the corn. 10 And thou shalt keep the feast of weeks unto the LORD thy
God with a tribute of a freewill offering of thine hand, which thou shalt
give unto the LORD thy God, according as the LORD thy God hath blessed
thee: 11 And thou shalt rejoice before the LORD thy God, thou, and thy
son, and thy daughter, and thy manservant, and thy maidservant, and
the Levite that is within thy gates, and the stranger, and the fatherless,
and the widow, that are among you, in the place which the LORD thy God hath
chosen to place his name there. 12 And thou shalt remember that thou wast
a bondman in Egypt: and thou shalt observe and do these statutes. 13 Thou
shalt observe the feast of tabernacles seven days, after that thou hast
gathered in thy corn and thy wine: 14 And thou shalt rejoice in thy feast,
thou, and thy son, and thy daughter, and thy manservant, and thy maidser-
vant, and the Levite, the stranger, and the fatherless, and the widow, that
are within thy gates."

## CHAPTER XVII.

1 "Thou shalt not sacrifice unto the LORD thy God any bullock, or sheep,
wherein is blemish, or any evil favouredness: for that is an abomination
unto the LORD thy God. 2 If there be found among you, within any of thy gates
which the LORD thy God giveth thee, man or woman, that hath wrought wickedness in the
sight of the LORD thy God, in transgressing his covenant, 3 And hath gone
and served other gods, and worshipped them, either the sun, or moon, or any
of the host of heaven, which I have not commanded; 4 And it be told thee,
and thou hast heard of it, and enquired diligently, and, behold, it be true
and the thing certain, that such abomination is wrought in Israel: 5 Then
shalt thou bring forth that man or that woman, which have committed that
wicked thing, unto thy gates, even that man or that woman, and shalt stone
them with stones, till they die. 6 At the mouth of two witnesses, or three
witnesses, shall he that is worthy of death be put to death; but at the
mouth of one witness he shall not be put to death. 7 The hands of the
witnesses shall be first upon him to put him to death, and afterward the
hands of all the people. So thou shalt put the evil away from among you."

## CHAPTER XX.

6. "And what man is there that hath betrothed a wife, and hath
not taken her? let him go and return unto his house, lest he die in the
battle, and another man take her."

CHAPTER XXI.

10. "When thou goest forth to war against thine enemies, and the LORD thy God hath delivered them into thine hands, and thou hast taken them captive, 11 And seest among the captives a beautiful woman, and hast a desire unto her, that thou wouldest have her to thy wife; 12 Then thou shalt bring her home to thine house; and she shall shave her head, and pare her nails; 13 And she shall put the raiment of her captivity from off her, and shall remain in thine house, and bewail her father and her mother a full month: and after that thou shalt go in unto her, and be her husband, and she shall be thy wife. 14 And it shall be, if thou have no delight in her, then thou shalt let her go whither she will; but thou shalt not sell her at all for money, thou shalt not make merchandise of her, because thou has humbled her. 15 If a man have two wives, one beloved, and another hated, and they have born him children, both the beloved and the hated; and if the first born son be her's that was hated: 16 Then it shall be, when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved firstborn before the son of the hated, which is indeed the firstborn: 17 But he shall acknowledge the son of the hated for the firstborn, by giving him a double portion of all that he hath: for he is the beginning of his strength; the right of the first born is his. 18 If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto them: 19 Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place; 20 And they shall say unto the elders of his city, This our son is stubborn and rebellious, he will not obey our voice; he is a glutton, and a drunkard. 21 And all the men of his city shall stone him with stones, that he die: so shalt thou put evil away from among you; and all Israel shall hear, and fear."

CHAPTER XXII.

5 "The woman shall not wear that which pertaineth unto a man, neither shall a man put on a woman's garment: for all that do so are abomination unto the LORD thy God. 11 Thou shalt not wear a garment of divers sorts, as of woollen and linen together. 12 Thou shalt make three fringes upon the four quarters of thy vesture, wherewith thou coverest thyself. 13 If any man take a wife, and go in unto her, and hate her. 14 And give occasions of speech against her, and bring up an evil name upon her, and say, I took this woman, and when I came to her, I found her not a maid: 15 Then shall the father of the damsel, and her mother, take and bring forth the tokens of the damsel's virginity unto the elders of the city in the gate: 16 And the damsel's father shall say unto the elders, I gave my daughter unto this man to wife, and he hateth her; 17 And, lo, he hath given occasions of speech against her, saying, I found not thy daughter a maid; and yet these are the tokens of my daughter's virginity. And they shall spread the cloth before the elders of the city. 18 And the elders of that city shall take that man and chastise him; 19 And they shall amerce him in an hundred shekels of silver, and give them unto the father of the damsel, because he hath brought up an evil name upon a virgin of Israel: and she shall be his wife; he may not put her away all his days. 20 But if this thing be true, and the tokens of virinity be not found for the damsel: 21 Then they shall bring out the damsel to the door of her father's house, and the men of her city shall stone her with stones that she die: because she hath wrought folly in Israel, to play the whore in her father's house: so shalt thou put evil away from among you. 22 If a man be found lying with a woman married to an husband, then they shall both of them die, both the man that lay with the woman, and the woman: so shalt thou put away evil from Israel. 23 If a damsel that is a virgin be betrothed unto an husband, and a man find her in the city, and lie with her; 24 Then ye shall bring them both out unto the gate of that city, and ye shall stone them with stones that they die; the damsel, because she cried not, being in the city;

CHAPTER XXI.

5 "The woman shall not wear that which pertaineth unto a man,
neither shall a man put on a woman's garment: for all that do are
abomination unto the LORD thy God. 11 Then shalt not wear a garment of
divers sorts, as of woollen and linen together. 12 Thou shalt make
thee fringes upon the four quarters of thy vesture, wherewith thou cover-
est thyself. 13 If any man take a wife, and go in unto her, and hate
her, 14 And give occasions of speech against her, and bring up an evil
name upon her, and say, I took this woman, and when I came to her, I found
her not a maid: 15 Then shall the father of the damsel, and her mother,
take and bring forth the tokens of the damsel's virginity unto the elders
of the city in the gate: 16 And the damsel's father shall say unto the
elders, I gave my daughter unto this man to wife, and he hateth her; 17
And, lo, he hath given occasions of speeches against her, saying, I found
not thy daughter a maid; and yet these are the tokens of my daughter's
virginity. And they shall spread the cloth before the elders of the city.
18 And the elders of that city shall take that man and chastise him; 19
And they shall amerce him in an hundred shekels of silver, and give them
unto the father of the damsel, because he hath brought up an evil name
upon a virgin of Israel: and she shall be his wife; he may not put her
away all his days. 20 But if this thing be true, and the tokens of virgi-
nity be not found for the damsel: 21 Then they shall bring out the damsel
to the door of her father's house, and the men of her city shall stone
her with stones that she die: because she hath wrought folly in Israel,
to play the whore in her father's house: so shalt thou put away evil
from among you. 22 If a man be found lying with a woman married to a
husband, then they shall both of them die, both the man that lay with the
woman, and the woman: so shalt thou put away evil from Israel. 23 If
a damsel that is a virgin be betrothed unto a husband, and a man find
her in the city, and lie with her; 24 Then ye shall bring them both
out unto the gate of that city, and ye shall stone them with stones
that they die; the damsel, because she cried not, being in the city;

and the man, because he hath humbled his neighbour's wife: so thou shalt put away evil from among you. 25 But if a man find a betrothed damsel in the field, and the man force her, and lie with her: then the man only that lay with her shall die: 26 But unto the damsel thou shalt do nothing; there is in the damsel no sin worthy of death: for as when a man riseth against his neighbour, and slayeth him, even so is this matter: 27 For he found her in the field, and the betrothed damsel cried, and there was none to save her. 28 If a man find a damsel that is a virgin, which is not betrothed, and lay hold on her, and lie with her, and they be found; 29 Then the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife; because he hath humbled her, he may not put her away all his days. 30 A man shall not take his father's wife, nor discover his father's skirt."

## CHAPTER XXIII.

2. "A bastard shall not enter into the congregation of the LORD; even to his tenth generation shall he not enter into the congregation of the LORD: 3 An Ammonite or Moabite shall not enter into the congregation of the LORD; even to their tenth generation shall they not enter into the congregation of the LORD for ever: 4 Because they met you not with bread and with water in the way, when ye came forth out of Egypt; and because they hired against thee Balaam the son of Beor of Pethor of Mesopotamia, to curse thee. 6 Thou shalt not seek their peace nor their prosperity all thy days for ever. 7 Thou shalt not abhor an Edomite; for he is thy brother: thou shalt not abhor an Egyptian; because thou wast a stranger in his land. 8 The children that are begotten of them shall enter into the congregation of the LORD in their third generation. 15 Thou shalt not deliver unto his master the servant which is escaped from his master unto thee: 16 He shall dwell with thee, even among you, in that place which he shall choose in one of thy gates, where it liketh him best: thou shalt not oppress him. 17 There shall be no whore of the daughters of Israel, nor a sodomite of the sons of Israel. 18 Thou shalt not bring the hire of a whore, or the price of a dog, into the house of the LORD thy God for any vow: for even both these are abomination unto the LORD thy God. 19 Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury: 20 Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury: that the LORD thy God may bless thee in all that thou settest thine hand to in the land whither thou goest to possess it."

## CHAPTER XXIV.

1. "When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of his house. 2 And when she is departed out of his house, she may go and be another man's wife. 3 And if the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house; or if the latter husband die, which took her to be his wife; 4 Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the LORD: and thou shalt not cause the land to sin, which the LORD thy God giveth thee for an inheritance. 5 When a man hath taken a new wife, he shall not go out to war, neither shall he be charged with any business; but he shall be free at home one year, and shall cheer up his wife which he hath taken. 7 If a man be found stealing any of his brethren of the children of Israel, and maketh merchandise of him, or selleth him; then that thief shall die; and thou shalt put evil away from among you. 14 Thou shalt not oppress an hired servant that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates: 15 At his day thou shalt give him his hire, neither shall the sun go down upon it; for he is poor, and setteth his heart upon it: lest he cry against thee unto

CHAPTER XXIII.

CHAPTER XXIV.

the LORD, and it be sin unto thee. 16 The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin. 17 Thou shalt not pervert the judgment of the stranger, nor of the fatherless; nor take a widow's raiment to pledge: 18 But thou shalt remember that thou wast a bondman in Egypt, and the LORD thy God redeemed thee thence: therefore I command thee to do this thing. 19 When thou cuttest down thine harvest in thy field, and hast forgot a sheaf in the field, thou shalt not go again to fetch it: it shall be for the stranger, for the fatherless, and for the widow: that the LORD thy God may bless thee in all the work of thine hands. 20 When thou beatest thine olive tree, thou shalt not go over the boughs again: it shall be for the stranger, for the fatherless, and for the widow. 21 When thou gatherest the grapes of thy vineyard, thou shalt not glean it afterward: it shall be for the stranger, for the fatherless, and for the widow. 22 And thou shalt remember that thou wast a bondman in the land of Egypt: therefore I command thee to do this thing."

## CHAPTER XXV.

5 "If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger: her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her. 6 And it shall be, that the firstborn which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel. 7 And if the man like not to take his brother's wife, then let his brother's wife go up to the gate unto the elders, and say, My husband's brother refuseth to raise up unto his brother a name in Israel, he will not perform the duty of my husband's brother. 8 Then the elders of his city shall call him, and speak unto him: and if he stand to it, and say, I like not to take her; 9 Then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and shall answer and say, So shall it be done unto that man that will not build up his brother's house. 10 And his name shall be called in Israel, The house of him that hath his shoe loosed. 11 When men strive together one with another, and the wife of the one draweth near for to deliver her husband out of the hand of him that smiteth him, and putteth forth her hand, and taketh him by the secrets: 12 Then thou shalt cut off her hand, thine eye shall not pity her."

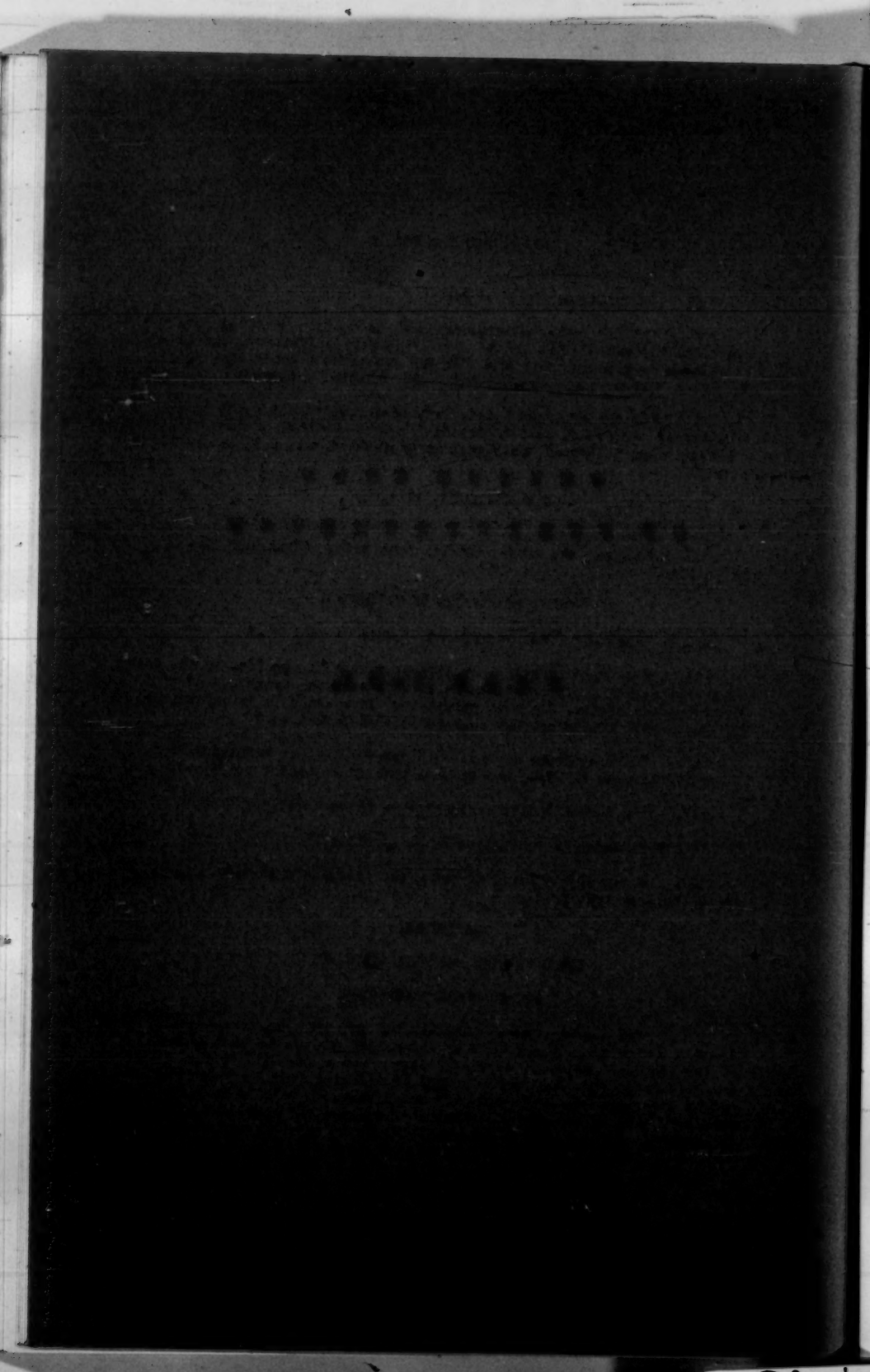
## CHAPTER XXVII.

10 "Thou shalt therefore obey the voice of the LORD thy God, and do his commandments and his statutes, which I command thee this day. 16 Cursed be he that setteth light by his father or his mother. And all the people shall say, Amen. 18 Cursed be he that maketh the blind to wander out of the way. And all the people shall say, Amen. 19 Cursed be he that perverteth the judgment of the stranger, fatherless, and widow. And all the people shall say, Amen. 20 Cursed be he that lieth with his father's wife; because he uncovereth his father's skirt. And all the people shall say, Amen. 21 Cursed be he that lieth with any manner of beast. And all the people shall say, Amen. 22 Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother. And all the people shall say, Amen. 23 Cursed be he that lieth with his mother in law, And all the people shall say, Amen. 24 Cursed be he that smiteth his neighbour secretly. And all the people shall say, Amen. 25 Cursed be he that taketh reward to slay an innocent person. And all the people shall say, Amen. 26 Cursed be he that confirmeth not all the words of this law to do them. And all the people shall say, Amen."

# J E W I S H  C O D E

# O F  J U R I S P R U D E N C E

## P A R T  I - V I.



LAWS QUALIFYING JUDGES.

9. "No woman may be a judge."

24. "If the judge understands that the case is that one robs the other and the robber will not be able to return the robbery, the judge is allowed to excommunicate him. If the robber is a woman, the judge may order that no one marry her until the claim be returned."

25. "He who comes to court first must receive attention first. Exceptions: An orphan must be attended before a widow, a widow before a learned man, a learned man before an uneducated man, and a woman before a man."

LAWS CONCERNING WITNESSES.

64. "Any one who knows anything concerning a case must appear to testify."

THOSE WHO CANNOT BE WITNESSES.

106. "Brothers (even not of same father or mother)."

107. "The same procedure or differentiation is applied in the case of a brother and a sister, taking A to represent the brother, and A' to represent the sister. General principle: If a woman is in any way forbidden to give testimony, her husband is also forbidden."

112. "A bridegroom may not be a witness in case involving bride. However, they may be witnesses in case involving either relatives."

147. "An hermaphrodite is ineligible to be a witness."

148. "A woman is ineligible to be a witness."

149. "However, if none but women are procurable as witnesses in a case, they may testify."

CHAPTER LX.

LAW GOVERNING PROPERTY SOLD, NOT

YET IN ONE'S POSSESSION.

10. "If a woman, whose husband died and left real estate, the deeds of which is made out in both names, and she claims that one-half of the purchase price for said real estate was bought by her out of her own belongings that she has by reason of a devise from her own family, and if it appears that the woman is not a business lady or in any way connected with or acted in her husband's business, she will be entitled to one-half; if the deed to said real estate is made out all in her own name, she will be entitled to all such estate."

CHAPTER LXII.

1. "If a woman, whose husband died, or her elder son, are actively engaged in her husband's or his father's business, and they claim that any notes or real estate made out in their own individual names were procured

for their own money and not for the money of the business or removable property in their possession, and belonged to them indivually, in order to establish their claims, the burden of proof of such claims is upon them and their witnesses must prove such claims. Such proof will be considered sufficient, if it is established that they found some money and applied it to the purchase of such articles, or that they got such money by gift."

CHAPTER LXXVII.

9. "If a wife borrow money, the husband is responsible for payment."

THE LAWS FOR OATHS.

CHAPTER XCIII.

1. "The following persons can be given an oath even if the claimant is not absolutely certain."

i. "A partner."

ii. "An agent."

iii. "An executor, appointed by the court."

iv. "A woman who does business in her home or in a store."

v. "Superintendents."

CHAPTER XCVII.

9. "We cannot take a pledge from the widow after the loan is made whether she be rich or poor."

21. "If the wife borrow money for support when the husband is away, he cannot collect from the appraised goods. The money that she has for her dowry cannot be touched, including her trousseau--when the money is in her name."

CHAPTER CXXVII.

1. "If a husband borrows money from his wife and later divorces her, she cannot collect the money, except if she can prove that the money had been given her on condition that the husband should have no part in it."

CHAPTER CXXXII.

1. "When a married woman, when she was surety for a loan, she is not liable to pay, except when her husband dies or she is divorced. When a minor gives surety he is not liable even when he is grown up."

2. "A widow when she is surety and later she marries, the money can be collected from the dowry she brought to her husband if that is a loan with a note."

CHAPTER CLXXVI.

29. "If one partner dies and the widow does not wish to continue the partnership, it can be immediately dissolved even if there is a set time."

CHAPTER CCLIII.

8. "If an invalid commands "give my daughter $200 for a dowry" she is entitled to the money even before marriage; however, if he says in dowry she is not entitled to it before she gets married."

CHAPTER CCLXVIII.

8. "The law of possession of the yard or the temporary four yards which entitled the owner of them to an article found there is only valid in case of a female; not in the case of a male or minor."

CHAPTER CCCVII.

4a. "A borrower is responsible for negligence, theft, loss and accident."

(b) "The above could not be found guilty unless they make some (Kinion) or ceremony of agreement."

(c) "This law applies to both man and woman, when he or she is the keeper."

(d) "By the return, it is not necessary to return to the individual himself, but can also be given to any member of the family."

(e) "The law of the Hirer: Liable and not Liable."

CHAPTER CCCXLIX.

1. "Both a man and a woman are liable for stealing. If, however, the woman is married nothing can be collected from her until she's divorced."

2. "If R's wife borrows an article from B's wife and the article is stolen or lost, and R confesses that he had the article in his possession, he and his wife have to swear that they no longer have it, and the judgment will be in the wife's name but nothing can be collected from her till she is divorced.

CHAPTER CCXL.

15. "It is the duty of a son and a daughter to honor and to fear the parents, but if a daughter marries she is not supposed to take so much care because she is in the possession of her husband, but if she is divorced she must take the same care as the son."

CHAPTER CCL.

5. "If a man and woman both ask for charity either for food or for clothing and if there is not enough money for both, the woman gets charity first."

6. "If a boy and girl orphans come to ask for a help for marriage and there is not enough money for both, the orphan girl comes first."

CHAPTER CCLII.

5. "If each declares that he or she would commit suicide unless released it is the duty to release the man first."

THE LAW FOR MURDER.

1. "When a man murders another, whether he be young or old, woman or child (even one day old), or when the mother being pregnant nine months, and the child born, or a person sick and near death and physicians giving up all hope of his recovery, the person guilty of such a crime is punished by death with sword.

33. "If a woman is the murderess, and if she is in the hour of giving birth, the law is to wait until she has already given birth."

THE LAW OF INHERITANCE

8. "And unto the children of Isreal shalt thou speak, saying, If a man die, and have no son, then shall ye cause his inheritance to pass unto his daughter."

CHAPTER CCLXXVI.

3. "If there are no son or descendants of such son, then the daughter is entitled to the inheritance. If there is no daughter living, if such daughter has any direct descendants whatever, such descendants are entitled to the inheritance."

5. "If there are no brothers or descendants of any brother, the sister of the deceased or her direct descendants inherit the estate."

6. "If there are no sisters or descendants of any sister, the estate belongs to the deceased's father's father, or to his direct male descendants, or to the female descendants if there are no male descendants. If there are no such grandfather and no descendants, the sister of the father of the deceased becomes the sole heir, and if she is not alive the inheritance goes to her direct male descendants or to her female descendants."

7. "If the father's mother and her descendants are not living, then the inheritance goes to the father's father's father or to his descendants. If there are no such issue, then the inheritance goes to the father's father's mother or to her issue. In accordance with the foregoing rules of law, the inheritance is distributed among the heirs mentioned ad infinitum, until the patriarch of the tribe has been reached (L. c.)"

8a. "If a man dies leaving a daughter and a son's daughter or a son's granddaughter, the latter (son's descendants) are the sole heirs, and the former is entitled to no share of the inheritance whatsoever—only support and a tenth of the estate."

8b. "The same rule of law applies likewise to a case where there is a daughter of the brother of the deceased and the sister of the deceased, or to a case where there is a daughter of the brother or the father of the deceased and a sister of the father of the deceased, or to any other case analogous to it."

9. "A man has two sons, both of them die during his lifetime, the one leaving three sons and the other leaving only one daughter. Thereafter the man dies. In such event, the daughter of the dead son is entitled to one-half of the inheritance, and the three sons of the other dead son are entitled to the other half of the inheritance. The reason for the above rule of law is that in the eyes of the law it is considered as if both sons were alive at the time of their father's death, each one inheriting an equal share and each one distributing his share among his legal heirs."

11a. "As regards the law of inheritance, the family of the mother of the deceased is not taken into consideration at all."

THE LAW FOR MURDER.

1. "When a man murder another, whether he be young or old, woman or child, (even one day old), or when the mother being pregnant slay *her* child, and the child born, or a person slay and hurt *both* and physicians giving up all hope of his recovery, the person guilty of such a crime is punished by death with sword.

---

22. "If a woman is the murderer, but if she is in the hour of giving birth, the law is to wait until she has already given birth."

---

THE LAW OF INHERITANCE

6. "And unto the children of Israel shalt thou speak, saying, If a man die, and have no son, then shall ye cause his inheritance to pass unto his daughter."

CHAPTER CCLXXXVI.

5. "If there are no son or descendants of such son, then the daughter is entitled to the inheritance. If there is no daughter living, if such daughter has any direct descendants whatever, such descendants are entitled to the inheritance."

---

3. "If there are no brothers or descendants of any brother, the sister of the deceased or her direct descendants inherit the estate."

---

6. "If there are no sisters or descendants of any sister, the estate belongs to the deceased's father, or to his direct male descendants, or to the female descendants if there are no male descendants. If there are no such grandfather and no descendants, the sister of the father of the deceased becomes the sole heir, and if she is not alive the inheritance goes to her direct male descendants or to her female descendants."

---

7. "If the father's mother, and her descendants are not living, then the inheritance goes to the father's father's father or to his descendants. If there are no such issue, then the inheritance goes to the father's father's mother or to her issue. In accordance with the foregoing rule of law, the inheritance is distributed among the heirs according to lineage, until the patriarch of the tribe has been reached (i. e. ---

---

8a. "If a man dies leaving a daughter and a son's daughter or a son's granddaughter, the latter (son's descendants) are the sole heirs, and the former is entitled to no share of the inheritance whatsoever--only supper, and a tenth of the estate."

---

9b. "The same rule of law applies likewise to a case where there is a daughter of the brother of the deceased and the sister of the deceased, or to a case where there is a daughter of the brother or the father of the deceased and a sister of the father of the deceased, or to any other case analogous to it."

---

9. "A man has two sons, both of them die during his lifetime, the one leaving three sons and the other leaving only one daughter. Thereafter the man dies. As such event, the daughter of the last son is entitled to one-half of the inheritance, and the three sons of the other land son are entitled to the other half of the inheritance. The reason for the above rule of law is that in the eyes of the law it is considered as if both sons were alive at the time of their father's death, each one inheriting an equal share and each one distributing his share among his legal heirs."

---

11a. "As regards the law of inheritance, the family of the mother of the deceased is not taken into consideration at all."

11b. "Hence, a mother inherits neither from her son nor her daughter. Brothers of only one mother but not of one father do not inherit from one another. Only the family of the father of the deceased are entitled to the inheritance."

12. "However, as in the case of a deceased father, so it is in the case of a deceased mother. Her son and his descendants are entitled to her inheritance. If there are no such heirs, the daughter of the deceased is entitled to her inheritance (Baba Bathra 111a)."

13. "An inheritance cannot pass from the mother through a deceased son in order to transfer the inheritance to his brothers of one father. For instance, if a son dies during the lifetime of his mother, and thereafter she dies, it cannot be argued that had the son been alive he would have inherited from his mother, now that he had no descendants living, his half brothers should be entitled to such inheritance. The inheritance reverts to the father's family of the deceased, since her son has no children living (L. c. 114b)."

14. "If, however, in the foregoing case the mother has died during her son's lifetime, and thereafter he has died, even if he was a minor of but one day old or even if he had lived after her death only one hour, he becomes her legal heir and he in turn causes the inheritance to pass to his heirs through his father (Niddah 43b)."

15. "The foregoing rule of law, however, holds good only in the event the child was actually born after his mother's death, but a child in its mother's womb does not inherit from his mother if she dies while pregnant (Tur)."

## CHAPTER CCLXXVII.

## THE RIGHTS OF THE FIRST-BORN SON.

13a. "The following three are competent to testify regarding the ascertainment of the first-born son: The midwife, his mother and his father. The midwife's testimony is valid only when she testifies immediately upon their birth that this child was born first. The mother's testimony is good during the seven days following the birth, but not thereafter. The father is always competent to testify (15)."

18. "If a man has two sons, one of whom is his first-born, and both sons die during his lifetime, the first-born leaving a daughter and the other one leaving a son, the grandson inherits one-third of his grandfather's estate, the share to which his father would have been entitled, and the grand-daughter takes two-thirds of her grandfather's estate, the share to which her father would have been entitled (Baba Bathra 116b)."

## CHAPTER CCLXXVIII.

## THE FIRST-BORN TAKES NO DOUBLE SHARE IN A LOAN

## OR IN PROFITS REALIZED; THE EFFECT OF THE

## FIRST-BORN SELLING HIS EXTRA SHARE

1. "The first-born is entitled to a double share only of his father's estate, but not of his mother's. Even if he is a first-born, both of his father and of his mother, his mother's estate must be divided equally among him and the other sons (Bekhoroth 51b)."

2. "If one dies leaving a widow and sons, and the widow dies afterward, before she has taken the oath prescribed by law regarding her marriage contract (vide, Chapter 96), all the estate belongs to the father's estate; therefore, the first-born son is entitled to a double share therein (Tur)."

11. "Hence, a mother inherits neither from nor non nor for daughter. Brothers only one mother but not of one father do not inherit from one another. Only the FAMILY of the father of the deceased are applied to the inheritance."

12. "However, as in the case of a deceased father, so it is in the case of a deceased mother. Her sons and his descendants are entitled to her inheritance. If there are no such heirs, the daughter of the deceased is entitled to her inheritance (Baba Bathra 111a)."

13. "An inheritance cannot pass from the mother through a deceased son in order to transfer the inheritance to his brothers or sons factors. For instance, if a son dies during the lifetime of his mother and thereafter she dies, it cannot be argued that the son-from alive he would have inherited from his mother, nor that he died as descendants living, his half brothers should be entitled to such inheritance. The inheritance reverts to the father's family of the deceased, since her son has no children living (B. c. 114b)."

14. "If, however, in the foregoing case the mother has died during her son's lifetime, and thereafter he has died, even if he was alive of but one day old or even if he had lived after her death only one hour, he becomes her legal heir and so in this case the inheritance to pass to his heirs through his father (Nidda 49b)."

15. "The foregoing rule of law, however, holds good only if the event the child was actually born after his mother's death, for a child in its mother's womb does not inherit from his mother if she dies while pregnant (Tur)."

## CHAPTER SOIXANTE.

### THE RIGHTS OF THE FIRST-BORN SON.

15a. "The following three are competent to testify regarding the consummation of the first-born son. The midwife, his mother and his father. The midwife's testimony is valid when she testifies the medically when their birth that this child was born first. The mother's testimony is good during the seven days following the birth, but not thereafter. The father is always considered to testify (Bk)."

16. "If a man has two sons, one of whom is his first-born, and both sons die during his lifetime, the first-born leaving a daughter and the other one leaving a son, the principal inheritance two-thirds of his grandfather's estate, the share to which his father would have been entitled (Baba Bathra 114b)."

## CHAPTER SOIXANTE-UN.

### THE FIRST-BORN TAKES NO DOUBLE SHARE IN A LEAN

### OR IN PROPERTY REALIZED; HIS REPORT OF THE

### FIRST-BORN SELLING HIS EXTRA SHARE.

1. "The first-born is entitled to a double share only of his father's estate, but not of his mother's. Even if he is a first-born, both of his father and of his mother, his mother's estate must be divided equally among him and the other sons (Yebamoth 51b)."

2. "If one dies leaving a widow and sons, and the widow dies afterward, before she has taken the oath prescribed by law governing her marriage contract (vide, Chapter 58), all the estate belongs to the father's estate; therefore, the first-born son is entitled to a double share therein (Tur)."

## CHAPTER CCLXXX.

## LAW OF EVIDENCE REGARDING THE ASCERTAINMENT OF LEGAL HEIRS.

8. "If a man dies leaving daughters and a hermaphrodite, the latter is entitled to a share of the estate equal to that taken by any one of the daughters (Baba Bathra 140a)."

9. "A house collapses and kills a man and his mother. The heirs of the son claim that the mother died first, and, therefore, they are entitled to the estate left. The heirs of the mother, on the other hand, claim that the son died first, and they are entitled to the estate. In such event the mother's estate goes to the heirs of the mother who are her legal heirs without any doubt (Maimonides; see Sec. 5)."

10. "If a house collapse and kill a man and his married daughter, and it is not ascertainable as to who died first (the husband claims that the father died first and the wife is the sole heir of the estate, and he heirs the wife; and the heir of the father claims that the daughter died first and the estate belongs to them); the father's estate goes to his heirs, and the daughter's husband is not entitled to anything thereof (L. c.; see Sec. 5)."

13. "If a house collapse and kill a man and his son or any of his legal heirs, and it cannot be ascertained as to who died first, and the son have a debt or widow to pay, and there is no other fund to collect from the son, the entire estate goes to the heirs, and widow of the son or his creditors collect nothing therefrom (Baba Bathra 157a; see Sec. 5)."

## CHAPTER CCLXXXI.

## ALIENATION OF PROPERTY WITH VIEW TO DISINHERITING LEGAL HEIRS.

2. "Therefore, if a man says that his first-born shall not take a double share in the estate, or if he says that one son of his shall not share at all in the estate together with his other sons, his words are of no effect whatever. If a man says that a certain man shall inherit him when he has a daughter, or if he says that his daughter shall inherit him where there is a son, or any case similar to that, his words are of no effect (L. c.)"

3. "If, however, a man has many legal heirs, such as sons, brothers or daughters, and he says, while sick, that this particular brother or daughter shall inherit him of all his brothers or daughters, his words are effective, whether this was said by him orally or written down by him. If, however, he says that a particular son alone shall inherit him, it is valid only when it was not committed to writing, but if a man commits to writing instructions that only one of his sons shall take his entire estate, such a son is considered in law to be only a guardian for the other sons (L. c.)"

15. "If one writes an instrument to the effect that his daughter shall take half of one share, like any one of the other sons, she is entitled to get them; it is considered in law as a mere inheritance, and, therefore, creditors and the widow of the deceased have priority over such gift, and the father can sell her fortune before he dies (Mordecai)."

CHAPTER CXLVIII.

LAW OF ESTATES EMANATING THE ASCERTAINMENT OF

[illegible]

[illegible] a man dies leaving daughters and a lawful wife, the [illegible] letter is putting in a share of the estate equal [illegible] one of the daughters (Ibba Battra 142a)."

9. "A house collapses and kills a man and his mother. The heirs of the son claim that the mother died first, and, therefore, they are entitled to the estate left. The heirs of the mother, on the other hand, claim that the son died first, and they are entitled to the estate. In such event the mother's estate goes to the heirs of the mother who are her legal heirs without any doubt (Maimonides: Yad Sec. D)."

10. "If a house collapses and kill a man and his married daughter, and it is not ascertainable as to who died first (the husband claims that the father died first and the wife is the sole heir of the estate, and he heirs the wife; and the heir of the father claims that the daughter died first and the estate belongs to them); the father's estate goes to his heirs, and the daughter's [illegible] relative to receiving thereof (I. e.: see Sec. 8)."

12. "If a house collapse and kill a man and his son or any of his legal heirs, and it cannot be ascertainedwho of the died first, and this son have a debt to pay, and there is no other fund to collect from the son, the entire estate goes to the heirs, and widow of the son or his creditors collect nothing therefrom (Baba Bathra 139a; see Sec. 8)."

CHAPTER CXLVIII.

ALIENATION OF PROPERTY WITH VIEW TO DISINHERIT-

[illegible] THE SPOUSE BEING

8. "Therefore, if a man says that his first-born shall not take a double share in the estate, or if he says that two sons of his shall not share at all in the estate together with his other sons, his words are of no effect whatever. If a man says that a certain son shall inherit his whole or half of his property, or if he says that his daughter shall inherit his share in a daughter, or if he says that his daughter shall inherit his share there is a son, or any case similar to that, his words are of no effect (I. e.)."

9. "If, however, a man has many legal heirs, such as sons, brothers or daughters, and he says, while alive, that this particular brother or daughter shall inherit his of all his brothers or daughters, his words are effective, whether this was said by him orally or written down by him. If, however, he says that a particular son alone shall inherit him, it is valid only when it was not committed to writing, but if a man commits to writing instructions that only one of his sons shall take his entire estate, such a one is considered in law to be only a guardian for the other sons (I. e.)."

12. "If one writes an instrument to the effect that his daughter shall take half of one share, like any one of the other sons, she is entitled to get them; it is considered in law as a mere instrument, and therefore, creditors and the widow of the deceased have priority over such gift, and the father can gil her fortune before he died (Maimonides)."

## CHAPTER CCLXXXIV.

### THE DEATH OF THE DECEASED MUST BE PROVEN

1. "Heirs cannot inherit a person unless they produce evidence to prove that he has died. If the heirs have heard it said that so and so has died, or if a woman came and said that her husband has died, such evidence is not enough to have his estate distributed among the heirs (Maimonides)."

## CHAPTER CCLXXXV.

### DISPOSITION OF THE PROPERTY OF A CAPTIVE OR OF ONE WHO HAS DISAPPEARED.

20. "It has happened that a certain old woman, who had three daughters, was taken into captivity with one of her daughters. Another one of the daughters died and had left surviving her a minor son. The sages then decided as follows: The third daughter still alive cannot be put into the possession of the estate, because it is probable that the mother is dead and that the minor grandchild is the heir to one-third of the estate, and the law is well established that an heir cannot be put in the possession of an estate belonging to a minor. The minor cannot be put in the possession of the estate because it is probable that the old woman is yet alive, and the law is well established that a minor cannot be put in the possession of the estate belonging to one taken into captivity. Since a guardian must be appointed for the share belonging to the minor, the same guardian must be appointed to take charge of the entire estate belonging to the old woman. Thereafter it was confirmed that the old woman died in captivity, and of the daughter it was uncertain. The Sages then decided that the daughter who is still alive shall take possession of one-third of the estate, which forms her share of the inheritance. The minor likewise takes possession of one-third, which is his share of the inheritance. For the one-third belonging to the daughter that was captured, a guardian must be appointed for it is probable that the captured daughter also died in captivity, and as a result the minor is entitled to one-half of her third (Baba Mechia 37)."

## CHAPTER CCLXXXVI.

### HOW MINOR AND ADULT HEIRS ARE TO RECEIVE SUPPORT FROM THE ESTATE.

1. "If a man dies leaving minor and adult sons or daughters, and the adult children require more expenditures for their clothing while the minors require more expenditures for their food, they are not to be supplied with food and clothing out of the bulk estate, but each and every one of the heirs receives his or her share if the estate and he or she can dispose of the same as seen fit (Baba Bathra 139b)."

## SUPPLEMENT TO CHAPTER CCLXXXIX.

8. "R and his wife and four daughters were in one house and the house collapsed and it is uncertain who died first or last. The heirs of R claim that R died last and R inherits all the estate from the decedents and they are the legal heirs of R, and the heirs of his wife claim that the woman died last and she inherits all the estate from the decedents and they are entitled to the estate, then the estate must be equally divided between the two heirs."

## CHAPTER CCLXXXIV.

### THE CLAIM OF THE DESCENDANT MAY BE PROVED.

1. "Failure cannot inherit a person unless they produce evidence to prove that he has died. If the heirs have heard it said that so and so has died, or if a woman came and said that her husband has died, evidence is not enough to have his estate distributed among the heirs (Maimonides)."

## CHAPTER CCLXXV.

### DISPOSITION OF THE PROPERTY OF A CAPTIVE OR OF ONE

### WHO HAS DISAPPEARED.

20. "It has happened that a certain old woman, who had three daughters, was taken into captivity with one of her daughters. Another one of the daughters died and had left surviving her a minor son. The ones that were divided as follows: The third daughter with alive cannot be put into the possession of the estate, because it is probable that the mother is dead and that the minor grandchild is the heir to one-third of the estate, and the law is well established that no heir cannot be put in the possession of an estate belonging to a minor. The minor cannot be put in the possession of the estate because it is probable that the old woman is yet alive, and the law is well established that a minor cannot be put in the possession of the estate belonging to one taken into captivity. Since a guardian must be appointed for the share belonging to the minor, the same guardian must be appointed to take charge of the entire estate belonging to the old woman. Therefore it was ascertained that the old woman died in captivity, and of the daughter it was uncertain. The Sages then decided that the daughter who is still alive shall take possession of one-third of the estate, which forms her share of the inheritance. The minor likewise takes possession of one-third, which is his share of the inheritance. For the one-third belonging to the daughter that was captured, a guardian must be appointed for it is probable that the captured daughter also died in captivity, and as a result the minor is entitled to one-half of her third (Bobe Bocdia 37)."

## CHAPTER CCLXXVI.

### HOW MINOR AND ADULT HEIRS ARE TO RECEIVE

### SUPPORT FROM THE ESTATE.

1. "If a man dies leaving minor and adult sons or daughters, and the adult children require more expenditures for their clothing while the minors require more expenditures for their food, they are not to be supplied with food and clothing out of the milk estate, but each and every one of the heirs receives his or her share if the estate and he or she can dispose of the same as soon fit (Bobe Bectra 128b)."

## SUPPLEMENT TO CHAPTER CCLXXIX.

6. "A and his wife and four daughters were in one house and the house collapsed and it is uncertain who died first or last. The heirs of A claim that A died last and A inherits all the estate from the deceased and they are the legal heirs of A, and the heirs of his wife claim that the woman died last and she inherits all the estate from the deceased and they are entitled to the estate, then the estate must be equally divided between the two heirs."

9. "If, however, the daughters were married and their husbands demand the inheritance, then the estate must be divided into six parts, and four parts shall be given to the husbands and one part to the heirs of R and one part to the wife's heirs."

## CHAPTER CCXC.

## LAWS CONCERNING GUARDIANS.

5. "If the testator appointed a minor or a woman as guardian for his minor heirs, the appointment is valid (Gittin 52b)."

8a. "The court cannot appoint as guardian a woman, or a minor, or an ignorant person who is suspected of violating laws and committing crimes."

## CHAPTER CCXCI.

## THE LAW OF GUARDIAN WITHOUT COMPENSATION.

22. "If the bailee return the bailment to the wife of the bailor, and afterwards it is stolen or lost, he is not liable."

24. "A man has given money to a bailee for guarding, and the bailee gives this money to his mother without notifying her that the money is not his, and afterward the money was stolen or lost, the Sages decide that the bailee is not liable, because he is permitted, according to the law, to give the money to one of his family supported by his table, and the mother cannot be responsible for the money lost, because she thought the money belonged to her son; therefore, she gave more attention to the guarding of the money (Baba Mechia 42)."

25. "Therefore the Sages decide that the bailee must take an oath that he gave it to his mother, and the mother must take an oath that she hid it and that it was stolen; and neither is liable (Baba Mechia 42)."

## CHAPTER CCCII.

## THE LAW OF GUARDING IS APPLICABLE

## TO EITHER A MAN OR WOMAN.

1. "If the bailee or bailor is a man or woman, the same law is applied to both (Baba Kama 15)."

# THE LAW OF MARRIAGE

## CHAPTER I.

## THE LAW OF PROPAGATION.

8a. "The law permits a man to marry several women in succession, provided he is able to support them. He must likewise obtain the consent of his first wife thereto (Yebamoth 65a)."

8b. "Rabenu Gershon (born in Metz, 960, and died 1040) put a ban upon the man who weds more than one wife. This enactment was intended to apply to certain particular lands only, and, therefore, took no effect in all countries. However, in the countries where polygamy is prohibited by law, it is the duty of every man to abide by such law, although the aforesaid ban took no effect there; and if any person married two wives, he is forced to divorce one of them (Nimuke Joseph)."

9. "If a man, without the consent of his wife, marries a second wife, he has committed a fraud thereby upon his first wife, and she may, therefore, force him to give her a bill of divorce (L. c.)"

10. "If a man claims that his wife has become insane, he must prove such contention before one hundred learned men who are competent to be judges; and he must likewise deposit the bill of divorce and the amount mentioned in the contract of marriage with a trustworthy person, and then he is permitted to marry another woman (R. Moses Iserlish, commonly known as the Rama)."

11. "When a woman is converted, it is disputed if the husband needs to deposit a bill of divorce for her or he can wed without them."

## CHAPTER II.

## THE DUTY OF A MAN TO MARRY A REPUTABLE WOMAN.

1. "A man is prohibited from marrying a woman forbidden to him by law, such as a doubtful bastard and the like. He who marries a woman forbidden to him because of pecuniary gain, will have disreputable children. Relatives may interfere with any member of the family who is about to marry a woman forbidden to him (Kidushin 70a)."

2. "If a man is promised a certain sum of money as his dowry, and such promise is not complied with, he shall not reject his bride-to-be on that account; neither shall he cause any quarrel because of that, but he shall accept whatever is given him with good grace and respect, and the Lord will, therefore, be with him and make him prosperous (Tur)."

3. "It is the duty of every man to make an endeavor to marry the daughter of a learned man. If he is unable to secure a learned man's daughter, he shall make an effort to marry the daughter of a man who is at the head of a synagogue; or of the one at the head of some charitable institution; or of a teacher; but by no means shall he marry the daughter of an ignorant person (Pesahim 49b)."

4. "It is the command of a man to marry his sister's daughter; and there is an opinion that the same rule of law applies to a brother's daughter as well (Sanhedrin 76)."

5. "A man is prohibited from marrying a woman of a family, three members of which are either lepers or epileptics (Yebamoth 64b)."

CHAPTER I.

THE LAW OF MARRIAGE

THE LAW OF PUBLICATION.

6. "The law permits a man to marry several women in succession, provided he is able to support them. He must likewise obtain the consent of his first wife thereto (Tobacco 65a)."

7. "Unless Parliament (Geen IX Mary, xxx, and xi.e Thos) put a ban upon the man he may marry more than one wife. This enactment was intended to apply to certain particular lands only, and, therefore, took no effect in all countries. However, in the countries where polygamy is prohibited by law, it is the duty of every man to abide by such law, although the aforesaid ban took no effect there; and if any person married two wives, he was forced to divorce one of them (Nimbo Jones)."

8. "If a man, without the consent of his wife, married a second wife, he was committed a fraud thereby upon his first wife, and she may therefore, force him to give her a bill of divorce (L. c.)."

10. "If a man states that his wife has become insane, he must prove such assertion before the married learned men who are competent to be judges; and he must likewise deposit the bill of divorce and the amount mentioned in the contract of marriage [illegible] and then be is permitted to marry another woman (K. Moses Levitic). concerning women or the Sons)."

11. "When a woman is converted, it is disputed if the husband needs to deposit a bill of divorce for her or he can not without them."

CHAPTER II.

THE DUTY OF A MAN TO MARRY A MENTIONED WOMAN.

1. "A man is prohibited from marrying a woman forbidden to him by law, such as a doubtful bastard and the like. He who marries a woman forbidden on his account of peculiarity only, will have disreputable children. Relatives may intefere with any member of the family who is about to marry a woman forbidden to him (Rimbin 70a)."

2. "If a man is promised a certain sum of money on his marry, and such promise is not complied with, he shall not reject his bride-to-be on that account; neither shall he cause any dispute because of that, but he shall accept whatever is given him with good grace and respect, and the land will, therefore, be with him and make his prosperous (Tur)."

3. "It is the duty of every man to take an endeavor to marry the daughter of a learned man. If he is unable to secure a learned man's daughter, he shall make an effort to marry the daughter of a man who is at the head of a synagogue or of the men at the head of some charitable institution; or of a teacher; but by no means shall he marry the daughter of an ignorant person (Pesachim 49b)."

4. "It is the command of a man to marry his sister's daughter; and there is an opinion that the same rule of law applies to a brother's daughter as well (Sanhedrin 76)."

5. "A man is prohibited from marrying a woman of a family, three members of which are either lepers or epileptics (Yebamoth 64b)."

6. "A young man is forbidden to marry an elderly woman, and, vice versa, an elderly man is forbidden to marry a young woman, because it is result adulterty (L. c. 106b)."

7. "A man is prohibited from marrying a woman with the intention of divorcing her after the expiration of a certain length of time. If, however, at the time of the marriage he expressly stated to the woman that he marries her with the intention of divorcing her after the expiration of a certain time, it is permissible. Referring to olden time when it was permitted to divorce a woman by force (L. c.)"

## CHAPTER IV.

## THE LAW OF BASTARDY

"One born from prohibited cohabitation shall not enter in the congregation of the Lord; even the tenth generation of him shall not enter in the congregation of the Lord (Deuteronomy xxiii, 3)."

1. "Neither bastards nor their descendants are permitted to intermarry with Isrealites. As to what constitutes a bastard (Vide Chapter xv, supra)."

2. "The descendants of either a male or female bastard are in law considered as bastards (Kiddushin 66)."

## CHAPTER V.

## DESTROYING THE POWER OF REPRODUCTION.

2. "It is also prohibited to destroy the power of a male to reproduce by making him drink any kind of medicine. It may, however, be given to a female if child bearing will endanger her life, and this must be done with the permission of her husband."

## CHAPTER VI.

## LAW CONCERNING PRIESTS.

1. "A cohen (priest born of the generation of Aharan, High Priest) is forbidden to marry a harlot or a divorcee. He is even prohibited from re-marrying his own wife after he has divorced her, but he is permitted to marry a widow."

2. "If a priest violates the aforesaid law and marries a divorced woman, he is bound to divorce her, because upon marrying, he declared that he married her according to the law of Moses and Israel, and the law prohibits such marriage."

4. "He is likewise prohibited from marrying a woman who has committed adultery even under duress (Niddah 52d)."

5. "Even if his own wife has committed adultery under duress, he is bound to divorce her."

6. "If a woman was once a divorcee she is not permitted to marry a priest (cohen) after the death of her second husband."

7. "If the wife of an Israelite (not a descendant of Aaron is forced to commit adultery, she is forbidden to marry a priest even after the death of her husband."

8. "A cohen (priest) is prohibited to dwell with his divorced wife under the same roof. If the house wherein they dwell is joint

CHAPTER IX.

THE LAW OF MASTERY

"One born from prohibited cohabitation shall not enter in the congregation of the Lord; even the tenth generation of him shall not enter in the congregation of the Lord (Deuteronomy xxiii, 3)."

1. "Mother bastards nor their descendants are permitted to intermarry with Israelites. As to what constitutes a bastard (Vide Chapter xv, supra)."

2. "The descendants of either a male or female bastard are in law considered as bastards (Kiddushin 68)."

CHAPTER V.

DESTROYING THE POWER OF REPRODUCTION.

3. "It is also prohibited to destroy the power of a male to reproduce by making him drink any kind of medicine. It may, however, be given to a female if child bearing will endanger her life, and this must be done with the permission of her husband."

CHAPTER VI.

LAW CONCERNING PAIRSOTS.

1. "A coban (priest born of the generation of slavery, High Priest) is forbidden to marry a divorcee. He is even prohibited from re-marrying his own wife after he has divorced her, but he is permitted to marry a widow."

2. "If a priest violates the aforesaid law and marries a divorced woman, he is bound to divorce her, because upon marrying, he declared that he married her according to the law of Moses and Israel, and the law prohibits such marriage."

4. "He is likewise prohibited from marrying a woman who has committed adultery even under duress (Niddah 65A)."

5. "Even if his own wife has committed adultery under duress, he is bound to divorce her."

6. "If a woman was once a divorcee she is not permitted to marry a priest (coban) after the death of her second husband."

7. "If the wife of an Israelite (not a descendant of Aaron is forced to commit adultery, she is forbidden to marry a priest even after the death of her husband."

8. "A coban (priest) is prohibited to dwell with his divorced wife under the same roof. If a [illegible] where they dwell in joint

property, his divorced wife is bound to leave him in possession, but if the house is hers, he must leave her in possession."

9. "If his divorced wife is indebted to him, he is not allowed to go and collect such debt from her in person, but must send another to collect the same."

## CHAPTER IX.

1. "If a woman marries a man and he dies and she subsequently marries another man and he dies likewise, she is not permitted to marry a third. If, however, she does marry a third man, he cannot divorce her on that account, but she is not then entitled to the amount mentioned in the contract of marriage which is prescribed by law in case of divorce or death (Yebamoth 64b)."

2. "If the husband, at the time of marriage, was aware of the fact that her two prior husbands died, he is bound to pay her the amount mentioned in the contract of marriage (Rabenu Asher)."

3. "If one of her former husbands did not die a natural death, when he was either murdered or died in some other manner, she is permitted to marry a third (Rabbi Moses Iserlish)."

4. "A man whose first and second wife have died, even when they died natural deaths, is permitted to marry a third, and so forth (Rabenu Asher)."

## CHAPTER X.

"If a man divorces his wife and she re-marries, then, if her second husband either dies or divorces her, she is not permitted to re-marry her first husband, even in the event such death or divorce took place immediately following the ceremony of her second marriage."

## CHAPTER XIII.

1. "A woman that is divorced or becomes a widow must wait at least ninety days before she may re-marry (the day of her husband's death or of her divorce excluded). She must wait ninety days, even if her husband's death or the divorce took place immediately following the ceremony of marriage. This period was provided for by the learned in order to ascertain whose child the woman might bear (Yebamoth 41-43a)."

2. "It was ordained by the Sages that she must wait ninety days, even if there be no probability of her being pregnant; as when she is known to be incapable of conception, or if she is too old to bear children, or in case her husband was away in a distant land, or he was at that time confined in prison, or even if immediately after the divorce or death of her husband she gave birth to a dead child."

3. "However, a man is permitted to re-marry his wife after he has divorce her without having to wait the ninety days mentioned above (Yebamoth 43a)."

4. "A man is not permitted to marry or even betroth a woman when pregnant from her prior husband. In such event she must wait until the child is born thereafter she cannot re-marry until the child is twenty-four months old (L. c. 42a)."

5. "It is prohibited to marry a woman who has a suckling child before the child attains the age of twenty-four months, even if the child is attended by a nurse or it is weaned in the meantime (the day of the child's birth and the day of the marriage being excluded) (Yebamoth 42b)."

CHAPTER IX.

1. "If a woman marries a man and he dies and she subsequently marries another man and he dies likewise, she is not permitted to marry a third. If, however, she have a third man, he cannot divorce her on that account, but she is not then entitled to the amount mentioned in the contract of marriage which is prescribed by law in case of divorce or death (Yebamoth 64b)."

2. "If the husband, at the time of marriage, was aware of the fact that her two prior husbands died, he is bound to pay her the amount mentioned in the contract of marriage (Rabbenu Asher)."

3. "If one of her former husbands did not die a natural death, when he was either murdered or died in some other manner, she is permitted to marry a third (Rabbi Moses Isserles)."

4. "A man whose first and second wife have died, even when they died natural deaths, is permitted to marry a third, and so forth (Rabbenu Asher)."

CHAPTER X.

"If a man divorce his wife and she re-marries, then, if her second husband either dies or divorces her, she is not permitted to re-marry her first husband, even in the event such death or divorce took place immediately following the contract of her second marriage."

CHAPTER XIII.

1. "A woman that is divorced or becomes a widow must wait at least ninety days before she may re-marry (the day of her husband's death or of her divorce excluded). She must wait ninety days, even if her husband's death or the divorce took place immediately following the contract of marriage. This period was provided for by the learned in order to ascertain whose child the woman might bear (Yebamoth 41-42a)."

2. "It was ordained by the Sages that she must wait ninety days, even if there be no possibility of her being pregnant; as when she is known to be incapable of conception, or if she is too old to bear children, or in case her husband was away in a distant land, or he was of that time confined in prison, or even if immediately after the divorce or death of her husband she gave birth to a dead child."

3. "However, a man is permitted to re-marry his wife after he has divorce her without having to wait the ninety days mentioned above (Yebamoth 42a)."

4. "A man is not permitted to marry or even betroth a woman when pregnant from her prior husband. In such event she must wait until the child is born thereafter she cannot re-marry until the child is twenty four months old (I. e. 42a)."

5. "It is prohibited to marry a woman who has a nursing child before the child attains the age of twenty-four months, even if the child is attended by a nurse or if it is weaned in the meantime (the day of the child's birth and the day of the marriage being excluded) (Yebamoth 42b)."

6. "If, however, the child has died, or if it was weaned prior to her husband's death or to her divorce, or if she gave the child a nurse three months before her husband's death or divorce, she has then to wait only ninety days before she can re-marry (L. c. )."

7. "A widow or divorcee may demand compensation for nursing the child, and she may demand payment of the amount mentioned in the contract of marriage, immediately upon the death of her husband, although she is unable to marry before the expiration of twenty-four months (L. c. )"

## CHAPTER XIV.

## THE LAW OF ENGAGEMENT OR MARRIAGE DURING MOURNING.

1. "It is forbidden to become engaged or to marry within the thirty days of mourning."

2. "If a man have small children to be guarded, then he is permitted to re-marry, even within seven days, but he is not permitted to cohabit with her until after thirty days."

3. "If he has no children and does not fulfill the law of propagation, he is not permitted to re-marry within seven days, but after the seven days he is permitted to re-marry, even if he is in mourning for his father or mother."

4. "And after thirty days it is permitted to everyone to re-marry, even if he fulfills the law of propagation, and he has no small children, and he is in mourning for his father or mother."

5. "If a man promises to marry a certain woman at a certain times, and before the time expires the woman loses her father or mother, if he does not fulfill the law of propagation, he is permitted to marry the woman during the thirty days of mourning."

6. "If a man has prepared all the articles for his wedding supper--baked his bread, slaughtered his cattle and mixed his wine with water--and before the wedding ceremony takes place his father dies, and it is impossible either to keep the articles in storage or to sell them; or if the mother of the bride dies after she makes ready all the articles that belong to the ornaments, and it is impossible to keep them until the seven days of mourning are over, because they would spoil, and there is no one to prepare other things, then it is permitted to take the deceased into another room, and the wedding ceremony may proceed."

8. "However, if it is the mother of the bridegroom or the father of the bride, or any other relative, who has died after the wedding articles are prepared, and these articles cannot be sold or kept, he must first attend the burial of the deceased and observe the seven days of mourning before the wedding ceremony can take place."

9. "If a relative of the bride or bridegroom dies during the seven days of benediction, he must begin the mourning period after the seven days. Everything that is happy is permitted him in those days except cohabitation, which is forbidden (M. K. 23)."

## CHAPTER XV.

## PROHIBITED MARRIAGE BECAUSE OF CONSANGUINITY.

1. "There are some relations that are forbidden by the Law of Moses, and there are some relations that are forbidden by rabbinical enactment.

CHAPTER XIV.

THE LAW OF MOURNING OR MARRIAGE DURING MOURNING.

MOURNING.

1. "It is forbidden to become engaged or to marry within the thirty days of mourning."

2. "If a man have small children to be reared, then he is permitted to re-marry, even within seven days, but he is not permitted to cohabit with her until after thirty days."

3. "If he has no children and does not fulfill the law of procreation, he is not permitted to re-marry within seven days, but after the seven days he is permitted to re-marry, even if he is mourning for his father or mother."

4. "And after thirty days it is permitted to everyone to re-marry, even if he fulfills the law of procreation, and he has no small children, and so is he mourning for his father or mother."

5. "If a man promises to marry a certain woman at a certain time, and before the time expires the woman loses her father or mother, if he does not fulfill the law of procreation, he is permitted to marry the woman during the thirty days of mourning."

6. "If a man has prepared all the articles for his wedding supper, behold his bread, slaughtered his cattle and mixed his wine with water, and before the wedding ceremony takes place his father dies, and it is impossible either to keep the articles in storage or to sell them; or if the father of the bride dies after she makes ready all the articles that belong to the ceremonies, and it is impossible to keep them until the seven days of mourning are over, because they would spoil, and there is no one to prepare other things, then it is permitted to take the dispersed into another room, and the wedding ceremony may proceed."

8. "However, if it is the mother of the bridegroom or the father of the bride, or any other relative, who has died after the wedding articles are prepared, and there articles cannot be sold or kept, he must first attend the burial of the deceased and observe the seven days of mourning before the wedding ceremony can take place."

9. "If a relative of the bride or bridegroom dies during the seven days of benediction, he must begin the mourning period after the seven days. Everything that is happy is permitted in these days except cohabitation, which is forbidden (M. K. 22)."

CHAPTER XV.

PROHIBITED MARRIAGE DEGREES OR CONSANGUINITY.

1. "There are some relations that are forbidden by the law of Moses, and there are some relations that are forbidden by rabbinical decrees.

If a man marries a woman forbidden by the Law of Moses, the marriage is void ipso facto and no divorce is necessary to dissolve the bonds of such matrimony. If a man marries a woman forbidden by rabbinical ordinance, the marriage is not void ipso facto and a divorce is necessary to dissolve the same."

2. "A mother is forbidden by the Law of Moses, but a mother's mother, etc., is forbidden by rabbinical enactment (Yebamoth 21a)."

3. "The mother of a man's mother's father is forbidden by rabbinical ordinance (L. c.)"

4. "The mother of a man's father etc., is forbidden by rabbinical enactment (L. c.)"

5. "The mother of a man's father's father is forbidden by rabbinical ordinance (L. c.)"

6a. "The Mosaic Law forbids a man to marry his father's (second) wife, either after his father has divorced her or after he has died (Sanhedrin 53a)."

6b. "He is, however, permitted to marry such wife's mother (Rabbi Moses Iserlish)."

7. "The wife of a man's father's father is forbidden by rabbinical enactment (Yebamoth 21a)."

8. "The wife of a man's mother's father is likewise forbidden by rabbinical ordinance (L. c.)"

9. "The wife of a man's father's mother's father is forbidden by rabbinical ordinance (Rabbi Moses Iserlish)."

10. "The Law Of Moses forbids the wife of a man's father's brother, when he is a brother of one father, but the wife of a man's father's brother, when he is a brother of only one mother, is forbidden by rabbinical enactment (Yebamoth 21a)."

11. "The wife of a man's mother's brother, whether he is a brother of only one father or of only one mother, is forbidden by rabbinical ordinance (L. c.)"

12. "A sister is forbidden by the Mosaic Law, whether she is a sister of only one father, or of only one mother, or an illegitimate sister (Yabamoth 23a)."

13. "One is permitted to marry the daughter of his father's wife whom she had borne by another husband (Yebamoth 21a)."

15. "By rabbinical enactment, it is prohibited to marry the daughter of a son's daughter, or the daughter of a daughter's daughter, or the daughter of a son's son, or the daughter of a daughter's son (Yebamoth 22b)."

16. "A wife's daughter, or her daughter's daughter, or her son's daughter is prohibited by the Law of Moses."

17. "The daughter of a man's wive's daughter's daughter, or the daughter of wife's son's son, etc., is forbidden by rabbinical enactment (Yebamoth 22a)."

18. "The wife's mother, or her mother's mother, or the mother of wife's father is forbidden by the Mosaic Law."

19. "The mother of a wife's mother's mother, or the mother of a wife's father's mother, or the mother of a wife's father's father is forbidden by the rabbinical law (L. c.)"

20. "The father's sister or the mother's sister, whether she is a sister of only one father or of only one mother, is prohibited by the Mosaic Law (Yebamoth 54a)."

21. "It is permitted to marry the daughter of the father's brother or of the mother's brother (Yerushalmi, Yebamoth)."

22. "It is permitted to marry the wife or the daughter of either the brother's son or the sister's son (L. c.)"

23. "The wife of the father's brother, when he is a brother of one father, is prohibited by the Mosaic Law (Yebamoth 23b)."

24. "The wife of the father's brother, when he is a brother of only one mother, or the wife of the mother's brother, whether he is a brother of only one father or of only one mother, is prohibited by rabbinical enactment (Yebamoth 23b)."

25. "The Law of Moses forbids the marriage of a son's wife (L. c.)"

26. "The wife of a son's son, etc., is forbidden by rabbinical ordinance (L. c. 21b)"

27. "The wife of the daughter's son is forbidden by rabbinical enactment (L. c.)"

28. "A man is permitted to marry the wife of his wife's son (L. c. 21a)."

29. "A stepson is permitted to marry his stepfather's wife (not his mother, of course) (L. c.)"

30. "By the Law of Moses, it is forbidden to marry the wife of a brother, whether he is a brother of only one father, or of only one mother, or he is an illegitimate brother (L. c.)"

31. "It is disputed whether a son-in-law is permitted to marry the second wife of his father-in-law, or whether a father-in-law is permitted to marry the second wife of his son-in-law (L. c. 23b)."

32. "It is permitted to marry the wife of a brother's son or the wife of a sister's son (see Chap. 2, Sanhedrin 76)."

33. "It is forever prohibited to marry a woman once wed to a relative, by which marriage she becomes either by the Law of Moses or by rabbinical enactment, even if, subsequent to such marriage, she married into another family and was then divorced or widowed (Mainmonides)."

34. "It is forbidden by the Mosaic Law to marry the wife's sister, whether she is a sister of only one father or only one mother, while the wife is alive, even after she is divorced; but is permitted to marry the wife's sister if the wife died (Yebamoth 57a)."

35. "If witnesses come and testify to the effect that the wife of a certain man who went abroad has died, and the husband marries her sister, and then it is proven that his wife is alive, it is not essential in such a case that a bill of divorce be given to the sister in order to dissolve the bonds of matrimony, and the husband is permitted to live with his first wife. The husband is permitted to marry the relatives of the sister, and the sister is permitted to marry his relatives. If the wife dies, he may marry the sister (Gittin 95)."

19. "The mother of a wife's mother, or the mother of a wife's father's mother, or the mother of a wife's father's father is forbidden by the rabbinical law (L. c.)."

20. "The father's sister or the mother's sister, whether she is a sister of only one father or of only one mother, is prohibited by the Mosaic law (Yebamoth 54a)."

21. "It is permitted to marry the daughter of the father's brother or of the mother's brother (Terumoth, Yebamoth)."

22. "It is permitted to marry the wife or the daughter of either the brother's son or the sister's son (L. c.)."

23. "The wife of the father's brother, when he is a brother of one father, is prohibited by the Mosaic law (Yebamoth 33b)."

24. "The wife of the father's brother, when he is a brother of only one mother, or the wife of the mother's brother, whether he is a brother of only one father or of only one mother, is prohibited by rabbinical enactment (Yebamoth 33b)."

25. "The law of Moses forbids the marriage of a man's wife (L. c.)."

26. "The wife of a son's son, etc., is forbidden by rabbinical enactment (L. c. 21b)."

27. "The wife of the daughter's son is forbidden by rabbinical enactment (L. c.)."

28. "A man is permitted to marry the wife of his wife's son (L. c. 21a)."

29. "A stepson is permitted to marry his stepfather's wife (not his mother, of course) (L. c.)."

30. "By the law of Moses, it is forbidden to marry the wife of a brother, whether he is a brother of only one father, or of only one mother, or he is an illegitimate brother (L. c.)."

31. "It is disputed whether a son-in-law is permitted to marry the second wife of his father-in-law, or whether a father-in-law is permitted to marry the second wife of his son-in-law (L. c. 22b)."

32. "It is permitted to marry the wife of a brother's son or the wife of a sister's son (see Chap. 2, Sanhedrin 76)."

33. "It is forever prohibited to marry a woman once wed to a relative, by which marriage she becomes either by the law of Moses or by rabbinical enactment, even if, independent to such marriage, she married into another family and was then divorced or widowed (Maimonides)."

34. "It is forbidden by the Mosaic law to marry the wife's sister, whether she is a sister of only one father or only one mother, while the wife is alive, even after she is divorced; but is permitted to marry the wife's sister if the wife died (Yebamoth 22a)."

35. "If witnesses come and testify to the effect that the wife of a certain man who went abroad has died, and the husband marries her sister, and then it is proven that his wife is alive, it is not essential in such a case that a bill of divorce be given to the sister in order to dissolve the bonds of matrimony, and the husband is permitted to live with his first wife. The husband is permitted to marry the relatives of the sister, and the sister is permitted to marry his relatives, if the wife dies, he may marry the sister (Gittin 88)."

36. "It is an established rule of law that if one marries any of the forbidden relatives, being under the impression for some reason or other or other that he is permitted to do so, no bill of divorce is required to dissolve the bonds of matrimony, because no betrothal takes effect in the case of forbidden relatives (Vide Sect., supra)."

37. "In case a man commits an adulterous act with any of his wife's relatives whom he is forbidden to marry, his wife does not thereby become forbidden to him, and he may marry any of the relatives of the woman with whom he had such intercourse. If, however, the woman with whom he has committed such adulterous act is accustomed to visit his house because of her relationship to his wife, he is bound to divorce his wife (Rabbi Moses Iserlish)."

38. "A man's wife and her sister's husband went abroad, and the man heard that both of them have died there. Thereafter the man married his wife's sister and then his wife and his brother-in-law returned from abroad. In such a case, his sister-in-law must obtain a bill of divorce from him and she is not permitted to cohabit with her husband, while his own wife is likewise forbidden to him (Yebamoth 95b)."

39. "If a man learns that his wife has died and he marries a sister, and thereupon it is proven that at the time he married her sister she was alive, but that she died thereafter, then the children born to him by his wife's sister while his wife was alive are considered bastards, but the children born after her death are legitimate (Gittin 94a)."

40. "If a man betroths a woman, and the betrothal for one reason or another becomes void, he is permitted to marry any of the relatives of the woman whom he has betrothed (L. c.)"

41. "The above rule of law, however, holds good only when the betrothal became void ipso facto, but if it were dissolved by a bill of divorce, he is not permitted to marry any of her relatives (Rabbi Moses Iserlish)."

## CHAPTER XVII.

## WHEN A MARRIED WOMAN IS PERMITTED TO RE-MARRY.

1. "A married woman is included among the forbidden connections, and if she is betrothed, the betrothal has no effect. Therefore, if a man marry a woman who is not legally divorced according to the Mosaic Law, even if she is divorced legally according to other law, the marriage is void."

2. "A married woman is permitted to remarry if her husband went beyond the seas and it was proven that he died there."

3. "The testimony of one witness, or of a slave, or of a woman, or of a relative, is sufficient to establish the fact that the husband of a woman has died, and thereby gives her permission to remary (Mishnah, Yebamoth)."

4. "Hearsay evidence is admissible in a case where the right of married women to remarry is involved (L. c.)"

5. "Witnesses disqualified from testifying by the Law of Moses are incompetent to testify in the above instance; but witnesses disqualified from testifying by rabbinical enactment are competent to testify (Yebamoth 25a)."

30. "It is an established rule of law that if one marries any of the forbidden relatives, being under the impression for some reason or other or either that he is permitted to do so, or will of divorce is refused to dissolve the bonds of matrimony, becomes so perforce, being effect in the case of forbidden relatives (Vide Ante., supra)."

32. "In case a man commits an adulterous act with any of his wife's relatives when he is forbidden to marry, his wife does not thereby become forbidden to him, and he may marry any of the relatives of the woman with whom he had such intercourse. If, however, the woman with whom he has committed such adulterous act is accustomed to visit her husband because of her relationship to his wife, he is bound to divorce his wife (Rabbi Moses Isserlish)."

38. "A man's wife and her sister's husband went abroad, and the man heard that both of them have died there. Thereafter the two married his wife's sister and then his wife and his brother-in-law returned from abroad. In such a case, his sister-in-law must obtain a bill of divorce from him and she is not permitted to cohabit with her husband, while his own wife is likewise forbidden to him (Yebamoth 90b)."

39. "If a man learns that his wife has died and he marries a sister, and thereupon it is proven that at the time he married her sister, and thereupon it is proven that at the time he married her sister she was alive, but that she died thereafter, then the children born to him by his wife's sister while his wife was alive are considered bastards, but the children born after her death are legitimate (Ritsh 36b)."

40. "If a man betroths a woman, and the betrothal for her reason or another becomes void, he is permitted to marry any of the relatives of the woman whom he has betrothed (L. c.)"

41. "The above rule of law, however, holds good only when the betrothal became void ipso facto, but if it were dissolved by a bill of divorce, he is not permitted to marry any of her relatives (Rabbi Moses Isserlish)."

## CHAPTER XVII.

## WHEN A MARRIED WOMAN IS PERMITTED TO RE-MARRY.

1. "A married woman is included among the forbidden connections, and if she is betrothed, the betrothal has no effect. Therefore, if a man marry a woman who is not legally divorced according to the Mosaic law, even if she is divorced legally according to other law, the marriage is void."

2. "A married woman is permitted to remarry if her husband went beyond the seas and it was proven that he died there."

3. "The testimony of one witness, or of a slave, or of a woman, or of a relative, is sufficient to establish the fact that the husband of a woman has died, and thereby gives her permission to remarry (Mishnah, Yebamoth)."

4. "Hearsay evidence is admissible in a case where the right of married woman to remarry is involved (L. c.)"

5. "Witnesses disqualified from testifying by the Law of Moses are incompetent to testify in the above instance; but witnesses disqualified from testifying by rabbinical enactment are competent to testify (Yebamoth 87b)."

6. "The following five women are disqualified from testifying to the death of a woman's husband: Her mother-in-law, her mother-in-law's daughter, her husband's wife (referring to the time when polygamy was permitted), the wife of her husband's brother, and her husband's daughter (who was born to him by another wife), because it is presumed that they hate one another, and that such relatives intentionally testify thus in order that she might remarry and thereby forbid her from living with her husband (Yebamoth 117)."

7. "When hearsay evidence is introduced to testify to the death of a woman's husband, it is not essential for the witness introducing such evidence to specifically mention the person or persons from whom he has heard it. It suffices if he simply states that he has heard a statement made to that effect (Rabbi Moses Iserlish)."

8. "If a witness testifies to the effect that he has seen the man dying, he must be examined and questioned as to how and under what circumstances he has seen him dying. If the testimony of the witness establishes the fact beyond any doubt that the man has actually died, the wife is permitted to re-marry, but if the witness simply testifies that he saw the man in a condition in which people ordinarily die, the wife is not permitted to re-marry (L. c.)"

9. "If a man comes and testifies that he himself has killed a certain person, although his testimony cannot be accepted in its entirety, for a man cannot testify against himself in criminal cases (Vide Jewish Code of Jurisprudence, page 32, par. 135), the part of the testimony relating to the death of the man is admitted, and his wife is permitted to re-marry (Yebamoth 25a)."

10. "If one witness comes to a woman and tells her that her husband has died, it is not necessary that she appear before a court of law to testify to that effect in order that she may remarry. She may appear before any court of law and declare that her husband has died, and such declaration will be accepted as true. If, however, the witness in whose name she has made the declaration denies it and says that her husband has not died, her declaration is not accepted as true (Ran)."

11. "If one witness testifies that a certain man has died a natural death, and another witness testifies that the man was killed, although the witnesses disagree as to the manner in which the man died, but both agree to the fact that he is not alive, his wife is permitted to re-marry (Yebamoth 117b)."

12. "If it is mentioned in a government document that such and such a man has died or has been killed, his wife is permitted to re-marry (Yerushalmi, Yebameth)."

21. "If the witnesses saw him fall into the ocean, they cannot testify that he has been drowned, because it is probable that he got out at some other part of the ocean where they could not see him. If, however, they saw him fall into a collection of water the entire surface of which could be seen by a man, and they have waited near the water so long that a man was bound to die within such a period of time, they may testify concerning his death and his wife may remarry (Yebamoth 121a)."

22a. "A woman herself may testify concerning the death of her husband, and she is permitted by reason of her testimony to remarry (Yebamoth 114b)."

22b. "In such event, she is likewise entitled to the sum of money that has been provided for her in her marriage contract, in case of widowhood or divorce, as provided for by the Law of Moses (Yebamoth 116b)."

23. "The last-named rule of law is true only in a case where she comes to court and says: "My husband has died, give me permission to remarry," and she makes no mention of the money she is entitled to get in such event. If, however, she says: "My husband has died, give me the money I am entitled to receive," she is not permitted to remarry, nor is she entitled to the money, for, it is presumed, that she is simply desirous of receiving her money during the lifetime of her husband, but she has no intention to remarry, as she is aware that her husband is alive (L. c.)"

## CHAPTER XXVII.

### LAWS CONCERNING BETROTHAL.

1. "If a man betroths a woman while giving her something of pecuniary value in consideration therefor, he must give her something valued at a perutha or more, and he must say to her in the presence of two witnesses: "Thou art betrothed unto me therewith the peruto" (the smallest coin then in circulation in the land, e.g., a cent in (U. S.), (Kidushin 2a)."

2. "It is preferable, and it is customary, to say: "Thou art betrothed (consecrated) to me, in accordance with the law of Moses and Israel" (Rabbi Moses Iserlish)."

3. "It is likewise customary to betroth a woman with a ring (L. c.)"

4. "If a woman gives money to a man and says to him: "I am betrothed to thee therefor," she does not become betrothed thereby (Kidushin 5b)."

5. "If a woman gives a certain coin to a man and says to him: "Take this coin from me as a gift and I will be betrothed to thee." The man takes the coin and replies: "Thou art betrothed to me for the honor thou has derived by my accepting a gift from thee." If he is a prominent person, she is betrothed thereby because she was honored by his having accepted a gift from her, but if he is an ordinary person she does not become betrothed thereby (L. c.)"

## CHAPTER XXVIII.

### BETROTHING A WOMAN WITH A STOLEN ARTICLE, ETC.

1a. "If a man betroths a woman by giving her an article of value which was stolen by him or of which he otherwise illegally obtained possession, she does not become betrothed thereby (Kidushin 52a)."

1b. "If, however, it is known that the owner of such article has despaired of ever regaining it, and has as a result renounced his right of ownership thereto, and it is thus known that the one who betroths the woman has acquired title to the article with which he betroths, she becomes betrothed thereby (Kidushin 52b)."

2. "If a man illegally obtains possession of an article belonging to a woman, and upon returning such article to her he says: "Thou art betrothed unto me therewith," if the two concerned have never before spoken about betrothal, she is not betrothed thereby (L. c.)"

3. "If, however, before the aforesaid betrothal took place, the man and the woman has spoken about being betrothed, and she accepted her article from him in silence, she becomes betrothed thereby (L. c.)"

4. "If there have been no betrothal negotiations between the man and the woman, and when he returns the article to her and says: "Thou art betrothed unto me," she replies, "Yes," she becomes betrothed thereby (L. c.)"

CHAPTER XXVII.

LAWS CONCERNING RETIREMENT.

1. "If a man betroths a woman while giving her something of pecuniary value in consideration thereof, he must give her something valued at a perutha or more, and he must ask to her in the presence of two witnesses: "Thou art betrothed unto me therewith the perutha." (Ithu mallaei ocin thun in olrculation lk' the land, o'a', a cert in (L. c.), (Kithukin Se)."

2. "It is preferable, and it is customary, to say "Thou art betrothed (consecrated) to me, in accordance with the law of Moses and Israel" (Matti Moses Isarilnd)."

3. "It is likewise customary to betroth a woman with a ring (L. c.)."

4. "If a woman gives money to a man and says to him: 'I am betrothed to thee thereby,' she does not become betrothed thereby (Kithukin Si)."

5. "If a woman gives a certain coin to a man, and says to him: "Take this coin from me as a gift and I will be betrothed to thee," the man takes the coin and replies: "Thou art betrothed to me for the money then has derived by my accepting a gift from thee." If he is a prominent person, she is betrothed thereby because she was honored by his having accepted a gift from her, but if he is an ordinary person she does not become betrothed thereby (L. c.)."

CHAPTER XXVIII.

BETROTHING A WOMAN WITH A CERTAIN ARTICLE, ETC.

1. "If a man betroths a woman by giving her an article of value which may belong by him or of which he otherwise illegally obtained possession, she does not become betrothed thereby (Kithukin Se)."

2. "If, however, it is known that the owner of such article has temporarily ceased to exercise ownership of it, and has on a result recovered his right of ownership thereto, and it is thus known that the one who betroths the woman has acquired title to the article with which he betroths, she becomes betrothed thereby (Kithukin Se)."

3. "If a man illegally obtains possession of an article belonging to a woman, and upon returning such article to her he says: "Thou art betrothed unto me therewith," if the two concerned have moral fetters about betrothed, she is not betrothed thereby (L. c.)."

4. "If, however, before the aforesaid betrothal took place, the man and the woman has spoken about being betrothed, and she accepted her article from him in silence, she becomes betrothed thereby (L. c.)."

5. "If there have been no betrothal negotiations between the man and the woman, and when he returns the article to her she accepts it and betrothed unto me," she replies, "Yes," she becomes betrothed thereby (L. c.)."

5a. "If after she has already received the article from him, he says to her: "Thou art betrothed unto me therewith," she does not become betrothed thereby, even in the event she replies," Yes," even when there were betrothal negotiations between them prior thereto (L. c.)"

5b. "Even if she claims that she has received the article from him originally with the intention of becoming betrothed, her words are of no effect (Rabbi Moses Iserlish)."

6. "The foregoing rules of law apply also to a case where a man has borrowed a certain sum of money from a woman, and when he repays her the loan he says to her: "Take the money that I owe thee, and thou art betrothed unto me therewith" (Kidushin 13)."

7. "If a woman owes to a man a certain sum of money and the man says to her: "Thou are betrothed unto me with the money thou owest to me," she does not become betrothed thereby. It is immaterial whether he holds a promissory note from her or not. This rule of law holds good even in a case where the money she has borrowed from him is still in her possession, she having made no use thereof or in the event the betrothal took place at the time the loan became due (Kidushin 6a, et seq.)"

8. "The above rule of law applies likewise to a case where the woman is indebted to the man for services rendered by him on her behalf (L. c.)"

9. "If a man, upon making a loan to a woman, says to her: "Thou art betrothed unto me in consideration of my extending the time within which it shall be paid, and I will make no demand upon thee till then," the betrothal is valid. Nevertheless, it is forbidden to do so, because it appears like receiving usury for a loan, which is prohibited by the law of Thora (Kidushin 6b)."

10. "If a woman owes money to a man, and he says to her: "Thou art betrothed unto me in consideration of my releasing you from such indebtedness," the betrothal is valid."

11a. "If a man lends money to a woman on a pledge, and he says to her: "Thou art betrothed to me with the money thou owest to me," the betrothal is valid (Kidushin 19a)."

11b. "It is disputed whether, in such a case, it is necessary that he return the pledge to her or not (Maimonides holding that the pledge must be returned, and other jurists holding that it must not be returned)."

12. "It is disputed whether betrothal takes effect in the event the man says to the woman: "Thou are betrothed unto me with the money which the man owes to me," if this took place in the presence of a debtor."

12a. "All jurists, however, concur that if the man thus betroth the woman in the absence of his debtors, the betrothal is doutful, even when he legally assign unto her the promissory notes which he holds from such debtors."

13. "If a man borrow an article from another and notifies him that with this article he is about to betroth a woman, the betrothal is valid. If he failed to inform the lender of the object of his loan, the betrothal is doubtful. The same rule of law applies to a case where a man hires an article (Tur)."

5. "If after she has already received the article from him, he says to her: 'Lend it betrothed unto me tomorrow,' she does not become betrothed thereby, even if the event she replies, 'Yea,' even more than twice were betrothed negotiations between them prior thereto (L. c.)."

6. "Even if she claims that she has received the article from him ostensibly with the intention of becoming betrothed, her words are of no effect (Rabbi Moses Isserles)."

6. "The foregoing rules of law apply also to a case where a man has borrowed a certain sum of money from a woman, and when in repaying her the loan he says to her: 'Take the money that I owe thee, and thou art betrothed unto me therewith' (Kidoshin 13)."

7. "If a woman owes to a man a certain sum of money and the man says to her: 'Thou are betrothed unto me with the money that owest to me,' she does not become betrothed thereby. It is immaterial whether he holds a promissory note from her or not. This rule of law applies even in a case where the money she has borrowed from him is still in her possession, she having made no use thereof or in the event the betrothal took place at the time the loan became due (Kidoshin 6a, et seq.)."

8. "The above rule of law applies likewise to a case where the woman is indebted to the man for services rendered by him or her for hire (L. c.)."

9. "If a man, upon making a loan to a woman, says to her: 'Thou art betrothed unto me in consideration of my abstaining the time within which it shall be paid, and I will make no demand upon thee till then,' the betrothal is valid. Nevertheless, it is forbidden to so contract it appears like receiving usury for a loan, which is prohibited by the law of Moses (Kidoshin 6b)."

10. "If a woman owes money to a man, and he says to her: 'Thou are betrothed unto me in consideration of my relenting for such indebtedness,' the betrothal is valid."

11a. "If a man lends money to a woman on a pledge, and he says to her: 'Thou are betrothed to me with the money thou owest to me,' the betrothal is valid (Kidoshin 52b)."

11b. "It is disputed whether betrothal takes effect in the event that he return the pledge to her or not (Maimonides holding that the pledge must be returned, and other Jurists holding that it must not be returned)."

12. "It is disputed whether betrothal takes effect in the event that the man says to the woman: 'Thou are betrothed unto me with the money which thou owest me.' If this took place in the presence of a debtor."

13a. "All jurists, however, concur that if the man thereto betroth the woman in the absence of his debtor, the betrothal is doubtful, even when he legally sends unto her the promissory notes which he holds from such debtors."

13b. "If a man borrow an article from another and notifies him that with this article he is about to betroth a woman, the betrothal is valid. It is called to inform the lender of the object of his loan. The betrothal is doubtful. The same rule of law applies to a case where a man hires an article (Tur)."

## CHAPTER XXIX.

### THE MONEY MUST BE GIVEN AWAY UNCONDITIONALLY.

1. "If a man says to a woman: "Thou art betrothed unto me with this coin, on condition that thou return the coin to me," the betrothal has no effect (Kidushin 12b)."

2. "If a woman says to a man: "Make a gift of some money to such and such a person, and in consideration thereof I shall become betrothed to thee," and the man gives the money to such a person and says to the woman: "Thou art betrothed unto me in consideration of the gift which I made at your request," the betrothal is valid (L. c.)"

5. "If a man says to a woman: "Be betrothed unto me with a denari" (gold piece; 25 cents in U. S. coin), and he gives her a pledge in the meantime to secure the payment of such coin, the betrothal is of no effect (Kidushin 7a)."

6. "A man says to a woman: "Be betrothed unto me with one hundred golden denarii," and he gives her only one denari, the betrothal takes effect from the time she accepted the denari, but he is bound to pay her the balance of the sum mentioned by him. For, this case is analogous to a case where a man says to a woman: "Be betrothed unto me with this denari on condition that I give you thereafter two hundred denarii," in which case the betrothal takes effect immediately upon her receiving the denari (Kidushin 8a)."

7. "The aforesaid rule of law, however, hold good only in a case where he says to her: "Be betrothed to me with the sum of one hundred denarii," but if he says to her: "Be betrothed to me with these two hundred denarii," and he begins to count it into her hand, and finds he is short of the amount, the betrothal is of no effect unless he gives her the entire sum mentioned by him. In such a case, even if there is only one denar short, both of them may rescind, unless he says to her that such denar which is short shall be considered as a loan made from her to him, and she consents to it (L. c.)"

8. "A man says to a woman: "Be betrothed to me with this denari, on condition that I give you thereafter up to the sum of one hundred denarii," and the woman replies: "On condition that you give up to me the sum of two hundred denarii," No more negotiations having taken place between them, each of them has departed. Thereafter the man opened negotiations again, and upon meeting her he betrothed her with the denari. In such a case she is not betrothed unless he gives the two hundred denarii mentioned by her (because his having opened negotiations again signified that he was willing to abide by her conditions). If, however, the woman has again opened negotiations, and he met her and betrothed her with the denari, he is bound to give her only the sum of one hundred denarii (tosefta, Kidushin)."

9. "If a man says to a woman, "You are betrothed to me with this cup, " and it was not stipulated by the man if he betrothed her with the cup or its contents—then, if the cup was filled with water she is betrothed with the cup and the water; if it was filled with wine she is betrothed with the cup and not with the wine. If it was filled with oil she is betrothed with the oil and not with the cup. Therefore the oil must be appraised. If it is worth a cent, then is the betrothal valid; if less, it is not valid (Kidushin 48)."

9a. "Other sages hold that if the cup was full with water the betrothal takes effect with the cup. If it was full with wine, then the betrothal takes effect with the wine. If it was full with oil, then it takes effect with it too."

CHAPTER XXIX.

RULE MOST LIKELY TO BE GIVEN AWAY UNCONSCIOUSLY.

1. "If a man says to a woman: 'Then are betrothed unto me with this coin,' on condition that thou return the coin to me," the betrothal has no effect (Kiddushin 12b)."

2. "If a woman says to a man: 'Make a gift to some needy to whom and much a person,' and in consideration thereof I shall become betrothed to thee," and the man gives the money to such a person and says to the woman: "Then art betrothed unto me in consideration of the gift which I made at your request," the betrothal is valid (K. c.)."

3. "If a man says to a woman: 'Be betrothed unto me with a denarii' (gold piece) SC omits it (K. B. coin), and he gives her a pledge in the meantime to secure the payment of such coin, the betrothal is of effect (Kiddushin 7a)."

4. "A man says to a woman: 'Be betrothed unto me with one hundred golden denarii,' and he gives her only one denarii, the betrothal takes effect from the time she accepted the denarii, but he is bound to pay her the balance of the sum mentioned by him. For, this case is MEKHOM to a case where a man says to a woman: 'Be betrothed unto me with this denarii on condition that I give you thereafter two hundred denarii,' in which case the betrothal takes effect immediately upon her receiving the denarii (Kiddushin 8a)."

7. "The aforesaid rule of law, however, hold good only in a case where he says to her: 'Be betrothed to me with the sum of one hundred denarii,' but if he says to her: 'Be betrothed to me with one hundred denarii,' and he begins to count it into her hand, and finds no issuance of the, account, the betrothal is of no effect unless he gives her the entire sum mentioned by him. In such a case, even if there is only one denar short, both of them may result, unless he says to her that such denar which is short shall be considered as a loan made from her to him, and she consents to it (K. c.)."

8. "A man says to a woman: 'Be betrothed to me with this denarii on condition that I give you thereafter up to the sum of one hundred denarii,' and the woman replies: 'On condition that you give up to me the sum of two hundred denarii,' No more negotiations having taken place between them, each of them has departed. Thereafter the man opened negotiations again and upon meeting her he betrothed her with the denarii in such a case she is not betrothed unless he gives the two hundred denarii mentioned by her (because he having opened negotiations again, it, however, the fact that he was willing to abide by her conditions). It, however, the woman has again opened negotiations, and he met her and betrothed her with the denarii, he is bound to give her only the sum of one hundred denarii (tosef'a, Kiddushin)."

9. "If a man says to a woman, 'You are betrothed to me with this cup,' and it was not stipulated by the man if he be betrothed her with the cup or its contents—then, if the cup was FILLED with water she is betrothed with the cup and the water; if it was filled with wine she is betrothed with the cup and not with the wine. If it was filled with oil she is betrothed with the oil and not with the cup. Therefore the oil must be separated. If it is worth a coin, then is the betrothal valid; if less, it is not valid (Kiddushin 49)."

9a. "Other says hold that if the cup was FULL with water the betrothal takes effect with the cup. If it was full with wine, then the betrothal takes effect with the wine. If it was full with oil, then it take effect with it too."

10. "If a man has any kind of vessel or all kinds of foods and the woman says to the man, "Give me a few of them," and the man says "If I give you, will you be betrothed to me?" If the woman says yes, and he give them to her, the betrothal takes effect."

11. "If she says give it to me, or throw it to me, and he gives it to her, the betrothal takes no effect, because she takes it as a joke."

12. "In the same event, if the man is drinking wine and the woman says, "Give me one cup of wine," and he says, "If I give it, will you be betrothed to me?" and she says, "put it to my mouth," or "put it in my hand," the betrothal takes no effect."

13. "If he says at the same time, "When I give it to you, you are betrothed to me," and she receives it, the betrothal takes effect."

## CHAPTER XXX.

### HOW DELIVERY OF BETROTHAL MONEY MUST BE MADE.

1. "If one betroths a woman it is not necessary that he deliver the coin or the document with which he betroths her into her hand. If the woman accepts his betrohal proposal, he throws the coin or the document into her hand, or into her lap, or into her courtyard, or into her field, the betrothal takes effect (Gittin 71a)."

2. "If the woman is standing in the premises belonging to the man, and he betroths her there, the betrothal takes no effect unless he delivers it into her hand or into her lap (L. c.)"

3. "If a man says to a woman, "Thou art betrothed unto me with this coin," and she takes it and throws it into the sea or into the fire in his presence, the betrothal is not valid (Kidushin 8)."

4. "If a man says to a woman, "Thou art betrothed unto me with this coin," and she says, "Leave it on this tone," if the stone is her's, it is valid; otherwise it is not valid. If it belongs to both, then the betrothed is doubtful (L. c.)"

5. "If a man says to a woman, "Thou art betrothed unto me with this bread," and she says, "Give it to this poor man," even if the poor man is supperted by her, it is not valid, for they bear alike the duty to support the poer (L. c.)"

6. "If a man says to a woman, "Thou art betrothed unto me with this bread," and she says, "Give it to this dog," if the dog is her's, it is valid; but if it is a stranger's dog, it is void. If the dog ran after her threatening to attack her and she ordered the bread given it, then the betrothal is doubtful. These rules apply only when afterward he gives these articles into her lap (L. c.)"

7. "There is a difference of opinion as to when a woman says to a man, "Give bread to the dog or leave it on the stone and I will be betrothed unto you," if it is valid or not (L. c.)"

8. "If a man says to a woman, "Thou art betrothed unto me with this coin," and she says, "Give the money to my father or to your father," even afterwards the man says "You are betrothed unto me with the money what I give to them," this betrothal is not effective. If, however, the woman says "On condition that my father or your father received the money," the betrothal is effective."

9. "If the woman was indebted to someone and the creditor pressed her for the money, and the man says "You are betrothed to me with the

10. "If a man has any kind of vessel of all kinds of foods and the woman says to the man, "Give me a few of them," and the man says "If I give you, will you be betrothed to me?" If the woman says 'yes' and he give them to her, the betrothal takes effect."

11. "If she says give it to me, or throw it to me, and he gives it to her, the betrothal takes no effect, because she takes it as a joke."

12. "In the same event, if the man is drinking wine and the woman says, "Give me one cup of wine," and he says, "If I give it, will you be betrothed to me?" and she says, "put it to my mouth," or "put it in my hand," the betrothal takes no effect."

13. "If he says at the same time, "Whe n I give it to you, you are betrothed to me," and she receives it, the betrothal takes effect."

## CHAPTER XXX.

### HOW INDIVIDUAL OR RELIGIOUS MONEY MUST BE MADE.

1. "If one betroths a woman it is not necessary that he deliver the coin or the document with which he betroths her into her hand. If the woman accepts his betrothal proposal, he throws the coin or the document into her hand, or into her lap, or into her courtyard, or into her field, the betrothal takes effect (within Yim)."

2. "If the woman is standing in the premises belonging to the man, and he betroths her there, the betrothal takes no effect unless he delivers it into her hand or into her lap (L. c.)"

3. "If a man says to a woman, "Thou art betrothed unto me with this coin," and she takes it and throws it into the sea or into the fire, in his presence, the betrothal is not valid (Kiddushin 8)."

4. "If a man says to a woman, "Thou art betrothed unto me with this coin," and she says, "Leave it on this table," if the coin is hers, it is valid; otherwise it is not valid. If it belongs to both, then the betrothal is doubtful (L. c.)"

5. "If a man says to a woman, "Thou art betrothed unto me with this bread," and she says, "Give it to this poor man," even if the poor man is supported by her, it is not valid, for they bear alike the duty to support the poor (L. c.)"

6. "If a man says to a woman, "Thou art betrothed unto me with this bread," and she says, "Give it to this dog," if the dog is hers, it is valid; but if it is a stranger's dog, it is void. If the dog ran after her threatening to attack her and she ordered the bread given it, then the betrothal is doubtful. These rules apply only when afterward no gives them articles into her lap (L. c.)"

7. "There is a difference of opinion as to when a woman says "it a man, "Give bread to the dog or lend it on the ring and I will be betrothed unto you," if it is valid or not (L. c.)"

8. "If a man says to a woman, "Thou art betrothed unto me with this coin," and she says, "Give the money to my father or to your father," even afterward the man says "Thou are betrothed unto me with the money what I give to them," this betrothal is not effective. If, however, the woman says "On condition that my father or your father received the money," the betrothal is effective."

9. "If the woman was ignorant to weakness and the creditor pressed her for the money, and the man says "Thou are betrothed to me with the

money," and she answers, "Give it to my creditor." If the creditor was a heathen, the betrothal takes effect; but if an Israelite, the betrothal is doubtful (Radbas)."

## CHAPTER XXXI.

1a. "No betrothal takes effect if the consideration received by her is valued less than a perutha (one cent) (Gitten 71a)."

1b. "If he betroths her an article, not mentioning what the value thereof is, it is not necessary that the article be appraised before the betrothal takes place in order to ascertain if it is worth a cent. He may first betroth her with the article, and if after the betrothal it is found that it is worth a cent or over, the betrothal takes effect (Kidushin 7b)."

"In a case where the man, upon betrothing the woman with an article, says that it is worth a certain sum of money, it is not necessary that the article be first appraised to ascertain if it is really worth the sum mentioned by him. If it is afterwards found that it is worth the sum, it is valid."

## CHAPTER XXXII.

### BETROTHING WITH A DOCUMENT.

1. "A man may betroth a woman by writing upon a piece of paper or a fragment of clay vessel: "Thou are betrothed to me," and such writing must be handed to the woman in the presence of not less then two witnesses (Kidushin 9a)."

2. "It is not necessary that the paper or the fragment of clay vessel upon which it was written be worth a cent in order that the betrothal may have effect (L. c.)"

3. "The man, upon writing the document with which he is to betroth, must have it in mind that this writing is intended for the very woman whom he subsequently betroths. If he writes it with the intention of delivering to one woman and then betroths another therewith, the betrothal is not valid (L. c. 9b)."

4. "The document must likewise be written with the woman's knowledge and consent. If it was written without her knowledge and consent, the betrothal is doubtful (L. c. 9b)."

## CHAPTER XXXIV.

### BETROTHAL BENEDICTIONS.

1. "It is a grave religious offence to have intercourse with a bride without having the benedictions uttered."

2. "The benedictions must be uttered in the presence of at least ten male persons, the bridegroom himself to be included in the required number."

3. "Before the betrothal takes place, a benediction is uttered over a glass of wine or beer, and after the betrothal six more benedictions are uttered."

4. "It is necessary to utter the benedictions for seven successive days following the marriage ceremony, if a bachelor marry even a widow, or vice versa; if on each and every of such days there is a new guest or guests; if a widow marry a widower, only three days benedictions."

money," and she answers, "Give it to my creditor." If the creditor was a heathen, the betrothal takes effect; but if an Israelite, the betrothal is doubtful (Rashbam)."

## CHAPTER XXXI.

1a. "No betrothal takes effect if the consideration received by her is valued less than a perutah (one cent) (Gittin 71a)."

1b. "If he betroths her on article, not mentioning what the value thereof is, it is not necessary that the article be appraised before the betrothal take place in order to ascertain if it is worth a cent. He may first betroth her with the article, and if after the betrothal it is found that it is worth a cent or over, the betrothal takes effect (Kiddushin 7b)."

"In a case where the man, upon betrothing the woman with an article, says that it is worth a certain sum of money, it is not necessary that the article be first appraised to ascertain if it is really worth the sum mentioned by him. If it is afterwards found that it is worth the sum, it is valid."

## CHAPTER XXXII.

## BETROTHING WITH A DOCUMENT

1a. "A man may betroth a woman by writing upon a piece of paper or a fragment of clay vessel. The document or the fragment must be handed to the woman in the presence of not less than two witnesses (Kiddushin 9a)."

2. "It is not necessary that the paper or the fragment of clay vessel upon which it was written be worth a cent in order that the betrothal may have effect (I. c.)."

3. "The man, upon writing the document with which he is to betroth, must have it in mind that this writing is intended for the very woman who is subsequently betrothed. If he writes it with the intention of delivering it to one woman and then betroths another therewith, the betrothal is not valid (I. c. 9b)."

4. "The document must likewise be written with the woman's knowledge and consent. If it was written without her knowledge and consent, the betrothal is doubtful (I. c. 9b)."

## CHAPTER XXXIV.

## RESTRICTIVE REGULATIONS.

1. "It is a grave religious offense to have intercourse with a bride without having the benedictions uttered."

2. "The benedictions must be uttered in the presence of at least ten male persons, the bridegroom himself to be included in the required number."

3. "Before the betrothal takes place, a benediction is uttered over a glass of wine or beer, and after the betrothal six more benedictions are uttered."

4. "It is necessary to utter the benedictions for seven successive days following the marriage ceremony, if a bachelor marry even a widow; except if a widow marry a widower, only three days benedictions."

5. "On the Sabbath following the marriage ceremony the benedictions must be uttered, even in case there are no new guests."

## CHAPTER XXXV.

## APPOINTING AN AGENT TO BETROTH.

1. "A man may appoint an agent to betroth for him any woman or a certain particular woman (Kidushin 41a)."

2. "The agent must say to the woman upon betrothing her: "Thou are betrothed to such and such a man" (Tur)."

3. "However, if it is possible to betroth her in person, he is forbidden to do so by an agent, unless he is well acquainted with the woman whom he wants to betroth. For, should he betroth a woman through an agent without knowing her, he may thereafter for one reason or another dislike her (Kidushin 41a)."

4. "Even in the event he is well acquainted with the woman, it is a meritorious act for a man to betroth a woman in person, if it is possible (L. c.)"

5. "An agent is competent to testify as a witness to the betrothal effected through him. If, therefore, a man appoints two agents to betroth a woman for him, no other witnesses need be called in to witness the betrothal (Kidushin 43a)."

6. "Everybody is competent to act as agent for a man for the purpose of betrothing a woman, excepting the deaf and dumb, the insane and a minor, because they lack understanding (Gittin 23a)."

7. "A man says to his agent: "Go to such and such a place and betroth a woman for me." The agent then goes to a place other than the one pointed out by his principal and betroths a woman there, such betrothal has no effect (Kidushin 50a)."

8. "Whenever an agent fails to comply with the instructions given to him by the principal, as when he was instructed to betroth a woman unconditionally and he betrothed her conditionally, or vice versa, or where he changed or modified the condition made by the principal, the betrothal does not take effect (Maimondies)."

9. "A man appoints an agent and says to him: "Go and betroth for me that woman who is to be found in such and such a place." The agent goes and betroths the woman mentioned, but she was then found in another place than the one mentioned by the principal. The betrothal takes effect, because the principal mentioned. The place in order to facilitate the task of the agent in locating the woman, and had no intention to make the location a condition of the betrothal (Kidushin 50a)."

10. "If a man appoints an agent to betroth the woman, for him, and the agent betroths the woman for himself, the agent is guilty of deception, but the betrothal is valid if he betrothed her with his own money (L. c. 58b)."

11. "Even if the agent at first said to the woman that such a man has appointed him as his agent to betroth her for him, and then upon betrothing her he said: "Thou art betrothed to me," the betrothal takes effect, provided that the woman well understood what took place and did not object (Rosh)."

CHAPTER XXXV.

ATTORNEYS AT LAW AGENT TO PRINCIPAL.

1. "A man may appoint an agent to betroth for him any woman or a certain particular woman (Kitunzia sha)."

2. "The agent must say to the woman upon betrothing her: 'Mine are betrothed to such and such a man' (Yur)."

3. "However, if it is possible to betroth her in person, he is forbidden to do so by an agent, unless he is well acquainted with the woman whom he wants to betroth. For, should he betroth a woman through an agent without knowing her, he may thereafter for one reason or another eliminate her (Kihunzia sha)."

4. "Even if the agent be in well acquainted with the woman, it is a meritorious act for a man to betroth a woman in person, if it is possible (L. c.)."

5. "An agent is competent to testify as a witness to the betrothal effected through him. If, therefore, a man appoints two agents to betroth a woman for him, no other witnesses need be called to attest the betrothal (Kihunzia sha)."

6. "Everybody is competent to act as agent for a man for the purpose of betrothing a woman, excepting the deaf and dumb, the insane and a minor, because they lack understanding (Mtitia 36a)."

7. "A man says to his agent: 'Go to such and such a place and betroth a woman for me.' The agent then goes to a place other than the one pointed out by his principal and betroths a woman there, such betrothal has no effect (Kihunzia 36a)."

8. "Whenever an agent fails to comply with the instructions given to him by the principal, as when he was instructed to betroth a woman unconditionally and he betrothed her conditionally, or vice versa, or where he changed or modified the condition made by the principal, the betrothal does not have effect (Matendeka)."

9. "A man appoints an agent and says to him: 'Go and betroth for me that woman who is to be found in such and such a place.' The agent goes and betroths the woman mentioned, but she was then found in another place than the one mentioned by the principal. The betrothal takes effect, because the principal mentioned. The place is order to facilitate the task of the agent in locating the woman, and was not intention to make the location a condition of the betrothal (Kihunzia 36a)."

10. "If a man appoints an agent to betroth the woman for him, and the agent betroths the woman for himself, the agent is guilty of deception, but the betrothal is valid if he betrothed her with his own money (L. c. 36b)."

11. "Even if the agent of first call to the woman that such a man has appointed him an his agent to betroth her for him, and then upon betrothing her he calls: 'Mine are betrothed to me,' the betrothal holds either, provided that the woman well understood what took place and did not object (Moon)."

12. "If the woman was unwilling to be betrothed to the principal and the agent has betrothed her to himself, the latter is not guilty of deception (Kidushin 59a)."

13. "A man appoints an agent for the purpose of betrothing a woman for him. The agent accordingly leaves to execute his mission, and is thereafter found dead, and it cannot be ascertained whether he did betroth a woman or not. It is presumed as a matter of law that the agent did betroth a woman for his principal, because there is a presumption that an agent performs the duty resting upon him. The principal is, therefore, prohibited from marrying any woman who has such relatives as would be forbidden to him an account of consanguinity (affinity), as a woman who has a daughter or a mother or the like. He is permitted to marry a woman who either has no such relatives, or who has such relatives, but were married at the time the agent was appointed (Nazir 12a)."

## CHAPTER XXXVI.

## A WOMAN APPOINTING AN AGENT FOR BETROTHAL.

1. "A woman may appoint an agent to accept betrothal for her. It is nevertheless preferable that she accepts the betrothal in person, but there is no prohibition in the case of a woman as there is in the case of a man (Kidushin 41a)."

2. "The man to whom the woman's agent came with betrothal propositions must say to the agent: "The woman who designated you agent is betrothed unto me." If the agent replies thereto: "I betrothed her unto you," or if he simply says yes, or even if he makes no reply whatever, the betrothal is valid (Maimonides)."

3. "There is an opinion that an agent appointed for the purpose of betrothing a woman cannot himself appoint a sub-agent to act in his stead."

4a. "A woman appoints an agent to accept betrothal from a certain man. After the appointment of the agent she accepts betrothal from another man, and the agent likewise accepted betrothals in compliance with her instructions. If it cannot be ascertained whether her agent accepted the betrothals first or whether she herself has accepted first, she is not permitted to be married to either one, and, in order to be allowed to marry another, she must obtain a bill of divorce from both of them. It is also permissible that she accept a divorce from only one of them and become the wife of the other (Kidushin 79a)."

4b. "However, the one whose legal wife she elects to be, must betroth her again (Rabbi Moses Iserlish)."

5. "The foregoing rule of law applies only to a case when the men to whom she was thus betrothed are strangers, but if the agent has accepted betrothal from a father and she accepted it from the son, or if the agent has accepted it from one brother and she accepted it from the other brother, both of them must give her a bill of divorce, and she is forbidden to become the wife of either of them (Maimonides, Kidushin IX)."

6. "One woman may become the agent of another woman for the purpose of accepting betrothals from a certain man (Kidushin 52a)."

7. "A woman cannot appoint an agent for the purpose of accepting betrothals from another agent appointed by the would-be bridegroom (Gittin 63a)."

13. "If the woman was unwilling to be betrothed to the principal and the agent was betrothed her to himself, the latter is not guilty of deception (Kiddushin 62a)."

14. "A man appoints an agent for the purpose of betrothing a woman for him. The agent accordingly proceeds to execute his mission, and is thereafter found dead, and it cannot be ascertained whether he did betroth a woman or not. It is presumed as a matter of law that the agent betrothed a woman for his principal, because their principal is a presumption that an agent performs the duty resting upon him. The principal is therefore prohibited from marrying any woman who has such relation as would be forbidden to him on account of consanguinity (affinity), as a woman who has a daughter or a mother or the like. But is permitted to marry a woman who either has no such relatives, or who has such relatives, but were married at the time the agent was appointed (Mezia 12a)."

CHAPTER XXXVI.

BETROTHING BY AGENT FOR MINORS.

1. "A woman may appoint an agent to accept betrothal for her, it is nevertheless preferable that she accepts the betrothal in person, but there is no prohibition in the case of a woman as there is in the case of a man (Kiddushin 41a)."

2. "The case is when the woman's agent came with betrothal proposition, and the agent [illegible] "The woman who delivered you agent is betrothed unto me." If the agent replies thereto: "I betrothed her unto you," or if he simply says yes, or even if he makes no reply whatever, the betrothal is valid (Maimonides)."

3. "There is an opinion that an agent appointed for the purpose of betrothing a woman cannot himself appoint a sub-agent to act in his stead."

4. "A woman appoints an agent to accept betrothal from a certain man. After the appointment of the agent she accepts betrothal from another man, and the agent likewise accepted betrothals in compliance with her instructions. If it cannot be ascertained whether her agent accepted the betrothals first or whether she herself has accepted first, she is not permitted to be married to either one, and in order to be allowed to marry another, she must obtain a bill of divorce from both of them. It is also permissible that she accept a divorce from only one of them and become the wife of the other (Kiddushin 79a)."

5. "The foregoing rule of law applies in a case when the men to whom she was thus betrothed are strangers, but if the agent has accepted betrothal from a father and she accepted it from the son, or if the agent has accepted it from one brother and she accepted it from the other brother, both of them must give her a bill of divorce, and she is forbidden to become the wife of either of them (Maimonides, Kiddushin IX)."

6. "One woman may become the agent of another woman for the purpose of accepting betrothals from a certain man (Kiddushin 62a)."

7. "A woman cannot appoint an agent for the purpose of accepting betrothals from another agent appointed by the would-be bridegroom (Gittin 23a)."

## CHAPTER XXXVII.

### BETROTHAL OF A MINOR.

1. "A man is prohibited from accepting betrothal for his minor daughter. He is bound to wait until she becomes of age and she will then be in a position to point out her choice and say, "This man I want" (Kidushin 49a)."

## CHAPTER XXXVIII.

### BETROTHALS ON CONDITIONS.

1. "Betrothal made on a condition, whether the condition was imposed by the man or by the woman, becomes valid only when the conditions are fulfilled, but not otherwise (Kidushin 61a)."

3. "If the condition imposed by the man betrothing a woman is not made in accordance with any of the foregoing rules of law, the condition is invalid, and the betrothal takes effect at once, as though no condition whatever has been imposed (L. c.)."

4a. "If a man, at the time he betroths a woman, makes a condition to the effect that he shall not be obligated to provide her with clothes or food, his condition is valid if she accepts the betrothals on such a condition, and he is not obligated to provide for her (Ketuboth 56a)."

4b. "If, however, the man makes a condition to the effect that he shall have no sexual intercourse with her, his condition is void, and he is bound to cohabit with her after the marriage (L. c.)"

5. "A man gives a cent to a woman and says to her: "Thou art betrothed to me with this coin on condition that I give you one hundred zuz." When such a condition is fulfilled, the betrothal takes effect as of the date the cent was given to her (Kidushin 60a)."

6. "If the woman, before the fulfillment of the above named condition, has accepted betrothals from another man, and thereafter the condition was complied with by the first man, the betrothal of the second man takes no effect (L. c.)"

7. "If the man says to her: "Thou art betrothed to me with this cent on condition that I give you one hundred zuz within thirty days from now," the betrothal takes effect from now on if he has complied with such a condition within the thirty days (L. c.)"

8. "If before the expiration of the thirty days, she accepts betrothals from another man, she becomes betrothed conditionally until the expiration of the thirty days. If at the end of the thirty days the first man failed to comply with the condition, the betrothal of the second takes effect and the betrothal of the first becomes void and she is not required to obtain a bill of divorce from the first. If within the thirty days the first man has complied with the condition, the betrothal of the first only takes effect and she is not required to obtain a divorce from the second man (L. c.)"

9. "If a man says to a woman: "Thou art betrothed unto me on the condition that my father consents to such betrothal," if the father expressly objected to it, or if he kept silent when asked, or if he has died before he became aware of such betrothal, the betrothal is invalid (Kidushin 63a)."

10. "If a man betroths a woman on a condition, he may thereafter waive such condition. It is not necessary that such waiver of condition be made in the presence of witnesses (Ketuboth 73a)."

## CHAPTER XXXVII.

### BETROTHAL OF A MINOR.

1. "A man is prohibited from accepting betrothal for his minor daughter. He is bound to wait until she becomes of age and tells him to in a position to point out any objection she may have to the man I mean (Kidushin 41a)."

## CHAPTER XXXVIII.

### BETROTHALS ON CONDITIONS.

1. "Betrothal made on a condition, whether the condition was imposed by the man or by the woman, becomes valid only when the conditions are fulfilled, but not otherwise (Kidushin 61a)."

3. "If the condition imposed by the man betrothing a woman is not made in accordance with any of the foregoing rules of law, the condition is invalid, and the betrothal takes effect at once, as though no condition whatever had been imposed (L. c.)."

4. "If a man, at the time he betroths a woman, makes a condition to the effect that he shall not be obligated to provide her with clothes or food, his condition is valid if she accepts the betrothals on such a condition, and he is not obligated to provide for her (Kethuboth 56a)."

5. "If, however, the man makes a condition to the effect that he shall have no normal intercourse with her, his condition is void, and he is bound to cohabit with her after the marriage (L. c.)."

8. "A man gives a cent to a woman and says to her: 'Then art betrothed to me with this coin on condition that I give you one hundred zuz.' Then such a condition is fulfilled, the betrothal takes effect as of the date the cent was given to her (Kidushin 60a)."

6. "If the woman, before the fulfillment of the above named condition, has accepted betrothals from another man, and thereafter the condition was complied with by the first man, the betrothal of the second man takes no effect (L. c.)."

7. "If he, a man to her: 'Thou art betrothed to me with this cent on condition that I give you one hundred zuz within thirty days from now,' the betrothal takes effect from now on if he has complied with such a condition within the thirty days (L. c.)."

8. "If before the expiration of the thirty days, she accepts betrothals from another man, she becomes betrothed conditionally until the expiration of the thirty days. If at the end of the thirty days the first man failed to comply with the condition, the betrothal of the second takes effect and the betrothal of the first becomes void and she is not required to obtain a bill of divorce from the first. If within the thirty days the first man has complied with the condition, the betrothal of the first only takes effect and she is not required to obtain a divorce from the second man (L. c.)."

9. "If a man says to a woman: 'Thou art betrothed unto me on the condition that my father consents to such betrothal,' if the father expressly objected to it, or if he kept silent when asked, or if he has died before he became aware of such betrothal, the betrothal is invalid (Kidushin 62a)."

10. "If a man betroths a woman on a condition, he may thereafter waive such condition. It is not necessary that such waiver of condition be made in the presence of witnesses (Kethuboth 73a)."

11. "The same rule of law applies to the case where the woman has imposed conditions before accepting the betrothal. She may thereafter waive them (L. c.)"

12. "In the case of betrothal, if the condition imposed by the man inures to the benefit of the man, as when he makes a condition that the woman has no deformities of body, or that she is not bound by any vows, or the like, it is within his power to waive such a condition; but if it inures to the benefit of the woman, as when he imposes a condition that the woman shall receive from him two hundred zuz, or the like, he cannot waive such a condition; and, if she does not consent to a waiver, she does not become betrothed if the condition is not complied with (Beth Joseph)."

## CHAPTER XLII.

## BETROTHAL REQUIRES WOMAN'S CONSENT AND WITNESSES.

1a. "A woman does not become betrothed unless it takes place with her consent (Kidushin 2a)."

1b. "If one betroths a woman by force or under duress, the betrothal has no effect (Baba Bathra 48b)."

2. "It is disputed whether or not the betrothal takes effect in a case where a man is forced to betroth a woman. Such betrothal is therefore doubtful."

3. "If one betroths a woman when there were no witnesses present, or if there was only one witness, the betrothal takes no effect, even when both the man and the woman admit that such betrothal has taken place. The betrothal is likewise ineffective in a case where the man first betroths a woman in the presence of one witness and afterwards betroths her in the presence of another witness, and one witness was not in the presence of the other witness (Kidushin 65a)."

4. "If a man betroths a woman in the presence of witness disqualified from testifying by the Law of Moses, the betrothal takes no effect (Kidushin 27b)."

"If one betroths in the presence of witnesses disqualified from testifying by rabbinical enactment, he must betroth her again, before eligible witnesses, if he is willing to marry her. If he does not want to marry her, he must give her a bill of divorce, because the betrothal is doubtful."

## CHAPTER XLIII.

## BETROTHAL OF A MINOR.

1. "A minor (under the age of thirteen years and one day) cannot betroth or marry (Yebamoth 96b, 112)."

2. "It is forbidden to cause a male or female minor to marry."

## CHAPTER XLIV.

## BETROTHAL OF THE DEAF AND DUMB AND INSANE.

1. "By the Law of Moses, a deaf and dumb man cannot betroth, and a deaf and dumb woman cannot accept betrothal. The Sages, however, have enacted that they shall be able to marry. If, therefore, A, a deaf and

11. "The same rule of law applies to the case where the woman has imposed conditions before accepting the betrothal. She may therefore waive them (L. c.)."

12. "In the case of betrothal, if the condition IMPOSED BY THE MAN insures to the benefit of the man, as when he makes a condition that the woman has no deformities of body, or that she is not bound by any vows, or the like, it is within his power to waive such a condition; but if it insures to the benefit of the woman, as when he imposes a condition that the woman shall receive from him ten hundred asses, or the like, he cannot waive such a condition; and if she does not consent to a waiver, she does not become betrothed if the condition is not complied with (Beth Joseph)."

## CHAPTER XLII.

### BETROTHAL REQUIRES WOMAN'S CONSENT AND KIDDUSHIN.

1a. "A woman does not become betrothed unless it takes place with her consent (Kidushin 2a)."

1b. "If one betrothes a woman by force or under duress, the betrothal has no effect (Baba Bathra 48b)."

2. "It is disputed whether or not THE betrothal takes effect in a case where a man is forced to betroth a woman. Such betrothal is therefore doubtful."

3. "If one betroths a woman when there are no witnesses present, or if there was only one witness, the betrothal takes no effect, even when both the man and the woman admit that such betrothal has taken place. The betrothal is likewise ineffective in a case where the man first betroths a woman in the presence of one witness and afterwards betroths her in the presence of another witness, and one witness was not in the presence of the other witness (Kidushin 65a)."

4. "If a man betroths a woman in the presence of witness disqualified from testifying by the law of Moses, the betrothal takes no effect (Kidushin 27b)."

"If one betroths in the presence of witnesses disqualified from testifying by rabbinical enactment, he must betroth her again, before eligible witnesses, if he is willing to marry her. If he does not want to marry her, he must give her a bill of divorce, because the betrothal is doubtful."

## CHAPTER XLIII.

### BETROTHAL OF A MINOR.

1. "A minor (under the age of thirteen years and one day) cannot betroth or marry (Yebamoth 36b, 112)."

2. "It is forbidden to cause a male or female minor to marry."

## CHAPTER XLIV.

### INSTRUCTION OF THE DEAF AND DUMB AND IDIOTS.

1. "By the law of Moses, a deaf and dumb man cannot betroth, and a deaf and dumb woman cannot accept betrothal. The Sages, however, have enacted that they shall be able to marry. If, therefore, A, a deaf and

dumb man, has married B, and thereafter C betrothed B, the betrothal is legally effective and C must give her a bill of divorce. If such divorce is given, B may again live with A, her deaf and dumb husband (L. c. 112b)."

2. "Neither the Mosaic Law nor the rabbinical law validates the betrothal of an insane man nor of an insane woman (L. c.)"

3. "If an intoxicated person betroths a woman, even if he is very intoxicated, the betrothal is valid. If, however, he was intoxicated as Lot had been, the betrothal is ineffective (L. c.)"

4. "If an Israelite betroths a heathen woman, or if a heathen betroths an Israeliteish woman, the betrothal takes no effect (Mishnah Kidushin)."

5. "If an hermaphrodite betroth a woman or becomes betrothed to a man, it is doubtful whether it is valid, because an hermaphrodite is of doubtful sex."

6. "If a man betroth a woman forbidden to him by the Laws of Moses, the betrothal is void and no divorce is necessary."

7. "If a converted Israelite betroths a woman, the betrothal is valid, and the woman, in order to remarry, must obtain from him a bill of divorce (Yebamoth 47b)."

## CHAPTER L.

## LAWS RELATING TO THE RETURN OF BETROTHAL CONSIDERATIONS, GIFTS AND PENALTIES.

1. "If a man betroths a woman and thereafter either he or she retracts, or either he or she dies, or he divorces her, the money or the article which she has received in consideration of her accepting, the betrothal does not have to be returned to him, even if such consideration amounts to the sum of one thousand denarii, because such article is considered a true gift (Baba Bathra 145a)."

3. "If one betroths his sister, the money which he has given her as a consideration therefor becomes a gift. It is a fact known to everybody that the betrothal takes no effect with a sister. The man, therefore, that does betroth his sister, has not done so through a mistake of the law but has originally intended to make it a gift to her (Kidushin 46b)."

7. "If a bridegroom refuses to come to the marriage ceremony, the guests having requested him to come, and he has already changed his mind, then afterwards the bride says, "At first you refused me; now I don't want you," the bride is free from all charges of expense (L. c.)"

8. "And the same rule applies when the bride refuses on account of the bad temper of the bridegroom, because he smacked her; she is free from all charges of expense (L. c.)"

13. "A agrees to marry B's daughter. B sends clothes and jewelry to A, and thereafter either A or B retracts, A must return to B every thing he has received from him, because it is presumed that B has sent the articles to A only in consideration of his subsequent marriage to his daughter (Rashba)."

14. "A agrees with B to marry the latter's daughter, and to confirm such promise one makes a symbolic agreement with the other, and

each one of them takes an oath, and each one deposits promissory notes with a third party to be forfeited in the case of retraction on either side. If it happens thereafter that a sister of the would-be bride becomes a convert, A may legally retract, and he is freed from the agreement, the oath, and likewise from the liability of the promissory note (Tur); and if, in such a case, the third party surrenders A's promissory note to the would-be bride, such delivery has no effect whatever (L. c.)"

15. "If, in the foregoing case, the bride-to-be has become insane thereafter, A may likewise retract (L. c.)"

16. "If A, the bridegroom to-be, becomes a degenerate in the meantime, as when he becomes a gambler or the like, the would-be bride may retract, and she is absolved from the agreement, the oath and also from the liability of the promissory note. If the third party surrenders the note to the bridegroom-to-be, such delivery has no effect whatever (L. c.)"

## CHAPTER LI.

## THE VALIDITY OF A VERBAL AGREEMENT.

1. "A makes marriage proposals to B. B agrees to bring upon her marriage a certain sum of money, and A agrees to provide for her a certain sum of money in the marriage contract. If thereafter A betroths B, their verbal agreement is binding, although there was no forms of agreement made between them. The same rule applies in the event of the first marriage (Ketubeth 102b)."

2. "If the father promises to his son or his daughter a dowry in the second marriage, it is not valid without a form of agreement from the promisor."

3. "In the first event the promise is like a legal debt, and if the promises dies before the marriage of his daughter, the bridegroom can collect from the heirs, even from sold property, like other debt."

4. "The bridegroom must pay the fee for the writing of the contract of engagement when only one copy is written; and if two copies are written each one must pay half."

7. "If a man takes an oath to give to his son-in-law a dowry, and the son-in-law strives with his wife, he does not have to fulfill his promise."

## CHAPTER LII.

## IF A MAN PROMISE MONEY TO HIS SON-IN-LAW AND HE REFUSES TO GIVE IT.

1. "If a man promises a dowry to his son-in-law in the second marriage and the father was away in a far country, or he have nothing to give, the bride can say to the bridegroom, "I have not promised any dowry to you; only my father. What can I do? Either marry or divorce me." Note: At that time, it was necessary to obtain a divorce in order to break an engagement or betrothal."

NOTE—"He can claim the dowry before he marries her, but after the marriage it is not permitted that the bridegroom should strive with his wife on account of the dowry (see Chap. 2)."

## CHAPTER LIII.

1. "In case a father promised a dowry to his daughter at the time of the engagement contract, should his daughter die before the marriage

CHAPTER XI.

THE VALIDITY OF A TRIBAL AGREEMENT.

1. "A major marriage proposals to B, a spree to bring upon for marriage a certain sum of money, and A agrees to provide for her a certain sum of money in the marriage contract. If thereafter A defrauds B, their verbal agreement is binding, although there was no form of agreement made between them. The same rule applies in the event of the first marriage (Section 1OO5)."

2. "If the father promises to his son or his daughter a dowry in the second marriage, it is not valid without a form of agreement from the promisor."

3. "In the first event the promise is like a legal debt, and if the promisor dies before the marriage of his daughter, the bridegroom can collect from the heirs, even from sold property, like other debt."

4. "The bridegroom must pay the fee for the writing of the contract of engagement when only one copy is written; and if two copies are written each one must pay half."

5. "If a man takes on oath to give to his son-in-law a dowry, and the son-in-law arrives with his wife, he does not have to fulfill his promise."

CHAPTER XII.

IF A MAN PROMISES MONEY TO HIS SON-IN-LAW AND

HE REFUSES TO GIVE IT.

1. "If a man promises a dowry to his son-in-law in the second marriage and the father was away in a far country, or he have nothing to give, the bride can marry the bridegroom. She have not promised any dowry to you; only my father. What can I do? Either marry or divorce me." Retort. At that time, it was necessary to obtain a divorce in order to break an engagement or betrothal."

NOTE--The one giving the dowry before he marries her, but after the marriage it is not permitted that the bridegroom should divide with his wife on account of the dowry (see Chap. 3)."

CHAPTER XIII.

1. "In case a father promised a dowry to his daughter at the time of the engagement contract, should his daughter die before the marriage

ceremony was performed, he need not pay the dowry, because his purpose was not accomplished."

2. "Should the daughter die shortly after the ceremony and the dowry was unpaid, there are two judicial opinions governing this case, namely, whether he shall or shall not fulfill his dowry contract."

5. "The above is rabbinical law. The following decision was handed down by Rabbi Tam."

(NOTE--"A noted rabbi of the time shortly after the Jews left Jerusalem.)"

6. "If the daughter or son died during the first year following the marriage, and there were no children resulting from the marriage, the unspent dowry must be returned to the father-in-law or his heirs. If the daughter or son die the second year after the marriage, half the dowry must be returned to the giver."

7. "He (or she) is not permitted to squander, but he (or she) is permitted to deduct all expenses due to the sickness of the wife (or of the husband)."

8. "If property was given as a dowry, the father-in-law or his heirs may forbid the bridegroom (or the bride) from selling it during the first two years."

9. "This custom applies only to the dowry, the wedding presents, or if the wife (or the husband) was heir to property, these need not be returned to the father-in-law, or the heirs."

10. "Even if a stranger gave the dowry, it must be returned to him, if during the first two years the bride (or the bridegroom) died."

11. "If the bride herself (or the bridegroom himself) provided the dowry, it belongs to the bridegroom (or to the bride)."

## CHAPTER LIV.

1. "If a father deposited the dowry with a trustee and he died before the wedding, then, if his daughter, even if she is of age, wants to give the dowry to her husband, she need not be obeyed. But, if, after the wedding, she permits the trustee to give the dowry to her husband, she may be obeyed (if she is of age) (Ketuboth 107)."

## CHAPTER LXVI.

## LAWS OF MARRIAGE CONTRACT.

1. "It is forbidden to be in privacy with a bride-to-be before the marriage contract has been written for her (Ketuboth 107)."

2. "Even if the husband desires to assign real property or money from which the amount of the marriage contract shall be collected, it is invalid."

4. "If the contract of marriage is lost, or if the wife has released her husband from liability, as when she has given him a receipt to the effect that she has received the full amount mentioned in the contract of marriage, it is the husband's duty to give her another contract for the amount provided for by law, for a man is prohibited from living with his wife without a contract of marriage, even for one hour (Ketuboth 56)."

6. "In the case where the woman has released her husband, the second contract is written as of to date, even when the witnesses remember the date of the first contract (L. c.)."

7. "If a woman sells her contract to her husband, he must give her another contract. If, however, she sells her contract to a stranger, the husband is not bound to give her another contract (Baba Bathra 87b)."

8. "The sum to be mentioned in the contract of marriage given to a virgin is not less than two hundred zuzim, and in the contract given to a widow it is not less than one hundred zuzim. It is permitted to increase the amount of the marriage contract (Ketuboth 10b)."

9. "If anyone deducts from the sum hereinbefore provided, his carnal knowledge of her is considered as adultery (Ketuboth 54b)."

## CHAPTER LXIX.

1. "A man cannot say to his wife: "I will not support you and I will not take from you whatever you earn" (Ketuboth 58a)."

2. "A man may, however, say to his wife: "Keep whatever you earn to yourself for your support, and if this does not suffice, I will give you the balance" (Ran)."

## CHAPTER LXX.

### LAWS CONCERNING SUPPORT, ETC.

1. "If a man marries a woman and she afterward becomes insane, he is bound to support her and also to provide medical treatment for her (Rashba)."

1a. "If the husband wants to support his wife without living together with her, that cannot be done without her consent (Ketuboth 64b, Tur)."

2. "If a man goes abroad and leaves some articles of value with a certain man for safekeeping, the Court has a right to take such articles from the bailee's possession for the purpose of supporting his wife, if he failed to provide for her (L. c.)."

3. "The above rule of law holds good even in a case where the husband has expressly ordered the bailee not to give any of the articles to his wife (Mordecai)."

4. "If the bailee returns the articles to the husband after a demand has been made on him by the woman, he must pay their value to the woman (L. c.)."

6. "Some authorities say, if a man is unable to support his wife, even with bread, he is compelled to divorce her, and the money of the marriage contract is a debt till he is able to pay. Another authority says that he is not forced to divorce her on the ground that he is poor and unable to support her (Ketuboth 77)."

7. "If a man have food enough only for one day, he must share the same with his wife (Tur)."

8. "It is the duty of each husband to be hired, even as a laborer, for any hard work in order to support his wife (L. c.)."

9. "If the husband possesses real property the wife has the right to sell the same in order to get her support, either from the fruit or from the funds, if there is not enough from the fruit (Raschbo)."

10. "If a man goes abroad and the woman comes to Court to demand support, it is not permitted to give her a decision for support for the first three months because it is assumed that the husband did not leave an empty house, and after three months, even if she has not the marriage contract in her hand, the Court must give her a decision for support; and when he has real or personal property, the Court has the right to sell it and support the wife, even if it is not known that he is dead. If the wife herself sells some of the estate for support, without the permission of the Court, it is valid, even without oath or publication, till the husband shall come and claim therefor (Ketuboth 107)."

11. "If the husband leave the home on account of strife, and he ran away with the intention of deserting the wife forever, the Court must allow her support immediately (Mordecai)."

12. "If the woman after three months was silent, she cannot demand support for the time she remained silent, but she can have support from the date of the claim, even if the Court adjourns the trial for any length of time (Ran)."

13. "If the Court gives her a judgment for support and collect from the estate of the husband, and assigns another to loan her money of support, and afterward the husband died and there is nothing to collect from, she is not responsible. If the Court says to the crediter, borrow her money, she is responsible (Raschbe)."

14. "If the woman leaves her husband's house and moves into another house, if she has good reasons for same on account of bad neighhood or strife between her and her husband, she is entitled to support. If she is not capable of giving sufficient reasons for leaving her husband's home, she loses the right of support, because it is not the duty of the husband to support his wife, except when she lives with him, because she is bound to serve him (Ketuboth 103)."

15. "If the husband goes to another city and the wife moves from the rooms, she does not lose the right of her support."

16. "If a man goes abroad and fails to provide for his wife, and she borrows money for her support, the husband is bound to pay the same (Ketuboth 107b)."

17. "In such a case, the creditors must demand it from her, and she in turn demands the same from her husband. If the woman shall have released her husband from the aforesaid obligation of support, the creditor can collect nothing (Ran)."

17a. "If the law is on the side of the woman, even when the husband notifies the creditor not to trust the woman on his account and she borrows, the husband is responsible for payment."

18. "If a man upon leaving says to his wife: "Apply whatever you earn to your support," and she keeps silent, she has thereby relinquished her right to support (Ketuboth 107b)."

19. "If a man goes abroad and his wife makes no demand for her support and she does not make any loans for such purpose, but she works by day and night in order to maintain herself, she thereby relinquishes her rights to support. If there is anything left over and above her living expense, it belongs to her (L. c.)."

## CHAPTER LXXI.

### A MAN'S DUTY TO SUPPORT HIS CHILDREN.

1. "A man is bound to support his children, whether male or female, until they reach the age of six years, even in the event they have inherited property from their mother's father (Ketuboth 65b)."

## CHAPTER LXXIII.

### A MAN'S DUTY TO PROVIDE HIS WIFE WITH CLOTHES,

### ETC.

1. "A man is bound to provide his wife with winter and summer clothes. The clothes must be such as are worn by the women of that locality (Maimonides)."

2. "He must likewise provide her with a residence, furniture and household furnishings (Misnah, Ketuboth)."

3. "He is likewise bound to give her certain ornaments, such as the colored shawl worn by women on the head, powder and a powder-puff and the like (Ketuboth 107b)."

4. "All this is said concerning a poor man, but a rich man must provide his wife with such jewelry as he can afford to buy (Ketuboth 64b)."

5. "If a man is unable to provide his wife with all the necessities mentioned above, he is compelled to divorce her (L. c.; see Chap. 70, Sec.6)."

## CHAPTER LXXIV.

1. "A man is permitted to say to his wife: "I do not want your father, or your mother, your brothers or your sisters to come to my house." She is, however, permitted to visit them when anything happens to them, and she is permitted to visit her father's house once a month and on every holiday. They (her relatives) are not allowed to visit her unless something befall her, such as sickness or confinement (Maimonides)."

2. "A woman is likewise permitted to say to her husband: "I do not want your father, your mother, your brothers or sisters to come to my house." She also has the right to object to living together with any one of the above-named relatives in the same court-yard, if they bother or annoy her (L. c.)."

3. "In the last named event it must be proven to the satisfaction of the Court that her complaint is well founded and that such relations annoy her and cause quarrels between her and her husband. If it is not so proven, she has no right to make her husband move away from the court-yard his family lives in, because the dwelling belongs to the husband and not to the woman. It is customary to ascertain the cause of such controversies between a woman and her husband's relatives by making diligent inquiry of neighbors (L. c.)."

4. "A man has a right to refuse to live with his wife in a certain alley or locality on the ground that bad or immoral people live in such neighborhood, although it is not generally known that there are such people in that neighborhood. In such event, the wife is bound to move out of that neighborhood with her husband, even if the residence belongs to her (Maimonides)."

5. "So is a man bound to move out of the locality he lives in, in case his wife objects to living there on the ground of bad or immoral

people being found in such locality. And this is true, even though he says that he, for his part does not mind such people (L. c.)."

## CHAPTER LXXV.

## THE LAW OF DIFFERENT COUNTRIES.

1. "If a man of another country marries a woman of this country, even if the countries are different in language, without stipulating where they are to live, she is forced to go with him to his country, or if she does not obey him she can be divorced and lose the money mentioned in the marriage contract, because she knew that he was not of her country and she agreed to these conditions (Ketuboth 110)."

2. "If she is used to living in a small town he cannot make her move to a big town or vice versa (L. c.)."

3. "If they both are from one country, she cannot be forced to go with him to another country; but he can move in the same country from one city to another (L. c.)."

4. "If a man cannot make a living in one country and he wants to go to another country to make a living, she is forced to go with him. If she refuses, she loses the rights of all the duties from the husband to the wife. Another opinion holds she is not bound to them (Ramo)."

## CHAPTER LXXVI.

3. "A woman may prevent her husband from going to trade in a distant place, from where he will be unable to come home frequently, and he must obtain his wife's permission when going out of town for any considerable length of time (L. c., Misnah)."

4. "In the places where it is customary to marry only one wife, a man is not permitted to marry two wives without first obtaining the consent thereto of his first wife (see Chapter I)."

5. "If a man refuses to cohabit with his wife for the reason that he desires to annoy her therewith, he is guilty of violating a prohibitory command of Torah: "And her duty of marriage shall he not dimish" (Exodus xxi, 10). If a man becomes sick or impotent, and is unable to have intercourse with his wife, six months are given him within which to recover from his illness. If he does not recover at the expiration of six months and his wife does not consent to live with him, he is bound to divorce her and pay her the entire sum of money mentioned in the contract of marriage (Maimonides)."

## CHAPTER LXXVII.

1. "A woman who refuses to cohabit with her husband is called a rebellious woman (Ketuboth 48a)."

2. "If she said the reason she refuses to cohabit with her husband is because she dislikes him, if the husband is willing, he may divorce her, and she is not entitled to the sum of money mentioned in the contract of marriage."

3. "Upon receiving such bill of divorce she may take with her all her old clothing and other belongings, which she brought to her husband on the day of her marriage, and she is bound to return everything that was given to her by her husband. All gifts that she has received from him, even the shoes she wears and the shawl that she covers her head with, must be returned to the husband (Maimonides)."

CHAPTER LXXV.

THE LAW OF DIFFERENT COUNTRIES.

1. "If a man of another country marries a woman of this country, even if the countries are different in language, without stipulation where they are to live, she is forced to go with him to his country, or if she does not obey him she can be divorced and lose the money mentioned in the marriage contract, because she knew that he was not of her country and she agreed to these conditions (Kesubos 110)."

2. "If she is used to living in a small town she cannot make her home in a big town or vice versa (L. c.)."

3. "If they both are from one country, she cannot be forced to go with him to another country; but he can move in the same country from one city to another (L. c.)."

4. "If a man cannot make a living in one country and he wants to go to another country to make a living, she is forced to go with him. If she returns, she loses the rights of all the duties from the husband to the wife. Another opinion holds she is not bound to them (Ibid)."

CHAPTER LXXVI.

1. "A woman may prevent her husband from going to trade in a distant place, from where he will be unable to come home frequently, and he must obtain his wife's consolation when going out of town for any considerable length of time (L. c., Mizrah)."

2. "In the places where it is customary to marry only one wife, a man is not permitted to marry two wives without first obtaining the consent thereto of his first wife (see Chapter I)."

3. "If a man refuses to cohabit with his wife for the reason that he desires to annoy her thereby, he is guilty of violating a prohibitory command of Torah: "And her duty of marriage shall he not diminish" (Exodus xxi. 10). If a man becomes sick or impotent, and is unable to have intercourse with his wife, six months are given him within which to recover from his illness. If he does not recover at the expiration of six months and his wife does not consent to live with him, he is bound to divorce her and pay her the entire sum of money mentioned in the contract of marriage (Maimonides)."

CHAPTER LXXVII.

1. "A woman who refuses to cohabit with her husband is called a rebellious woman (Kesubos 48a)."

2. "If she said the reason she refuses to cohabit with her husband is because she dislikes him, if the husband is willing, he may divorce her, and she is not entitled to the sum of money mentioned in the contract of marriage."

3. "Upon receiving such bill of divorce she may take with her all her old clothing and other belongings, which she brought to her husband on the day of her marriage, and she is bound to return everything that was given to her by her husband. All gifts that she has received from him, over the above she must the money and the wheat that she covers her head with, must be returned to the husband (Maimonides)."

4. "If the woman says that she rebelled against her husband for the reason that he has mistreated her or because he has quarreled with her or the like, a warning is given her by the Court that in case she continues thus to rebel, she will lose all rights under the contract of marriage. For four successive Sabbaths this fact is made public in all synogogues and announced thus: "Such and such a woman has rebelled against her husband." At the expiration of the four Sabbaths, another warning is given her by the Court to the effect that in case she does not become reconciled to her husband she will lose all her rights created by the contract of marriage. If she still persists, her husband may divorce her and she is not entitled to any of the rights provided for in the marriage contract (Ketuboth)."

5. "Should the woman die before she accepts the bill of divorce from her husband, he becomes the heir of her property, and he is bound to pay all the funeral expenses (Rabbi Moses Iserlish)."

## CHAPTER LXXVIII.

### DUTY OF HUSBAND TO RELEASE HIS WIFE.

1. "It is the duty of the husband to release, or ransom, his wife from detention, or captivity, without considering the costs (Ketuboth 51)."

2. "If the woman is suspected of willingly being adulterous while being in detention, or in captivity, her husband need not secure her release, or ransom her (Ramo)."

3. "He cannot claim to be immune of the responsibility to release, or ransom, his wife, even if he would deny himself the use of the fruit of her dowry. He must release or ransom her."

4. "This same rule would apply to present conditions of arrest or detention."

5. "It is disputed whether she should be released if such arrest or detention is due to her breaking of the law on account of her neglect, to wit: If she has committed theft or is guilty of riotous or disorderly conduct (Pischi Tsuvo)."

6. "Should it happen that the sum of money asked for her release, or as bail, is more than that of the amount of the marriage contract, he must release her."

7. "If the husband is on a far journey, it is the duty of the Court to release her with moneys of his estate."

8. "If both the husband and the wife are detained, or in captivity, the wife should first secure her liberty, and he should be released afterwards (Haraess 13)."

9. "If the woman in captivity is the wife of a choen (priest), he must secure her release, although he cannot hold her as his wife, and must divorce her and give her the amount of the marriage contract and return her to her father's house (Ketuboth 51)."

10. "If a man marries a woman forbidden to him by law, he need not release her, but must return to her the amount of the marriage contract, and she will ransom herself (L. c. 52)."

11. "If the captive woman is a widow, the heirs of the estate need not release her because the responsibility of the husband ends with his death. They need not release her, even if she was captured during his lifetime and he died before she was released (L. c.)."

conscious publishing company, inc.

4. "If the woman says that she rebelled against her husband for the reason that he had mistreated her or because he had quarreled with her or the like, a warning is given her by the Court that in case she continues thus to rebel, she will lose all rights under the contract of marriage. For long exclusive desertion this fact is made public in all newspapers and announced thus: "Such and such a woman has rebelled against her husband." At the expiration of the four months, another warning is given her by the Court to the effect that in case she does not become reconciled to her husband she will lose all her rights created by the contract of marriage. If she still persists, her husband may divorce her and she is not entitled to any of the rights provided for in the marriage contract (Kentucky)."

5. "Should the woman die before she accepts the bill of divorce from her husband, he becomes the heir of her property, and he is bound to pay all the funeral expenses (North Dakota Laws)."

## CHAPTER LXXXVIII.

### DUTY OF HUSBAND TO RELEASE HIS WIFE.

1. "It is the duty of the husband to release, or remove his wife from detention, or captivity, without considering the costs (Kentucky 21)."

2. "If the woman is suspected of willingly being adulterous while being in captivity, or in captivity, her husband need not secure her release, or ransom her (Mano)."

3. "He cannot claim to be immune of the responsibility to release, or ransom, his wife, even if he would deny himself the use of the fruit of her dowry. He must release or ransom her."

4. "This same rule would apply to present conditions of arrest or detention."

5. "It is disputed whether she should be released if such arrest or detention is due to her breaking of the law on account of her neglect, or with if she has committed theft or is guilty of rebtou, or disorderly conduct (Fiqui Tanu)."

6. "Should it happen that the sum of money asked for her release, or as bail, is more than that of the amount of the marriage contract, he must release her."

7. "If the husband is on a long journey, it is the duty of the Court to release her with moneys of his estate."

8. "If both the husband and the wife are detained, or in captivity, the wife should first secure her liberty, and he should be released afterwards (Harari 15)."

9. "If the woman is captivity is the wife of a chief (priest), he must secure her release, although he cannot hold her as his wife, and must divorce her and give her the amount of the marriage contract and return her to her father's house (Kentucky 21)."

10. "If a man marries a woman forbidden to him by law, he need not release her, but must return to her the amount of the marriage contract and she will remain herself (I. c. 20)."

11. "If the captive woman is a widow, the heirs of the estate need not release her because the responsibility of the husband ends with his death. They need not release her, even if she was captured during the lifetime and he died before she was released (I. c.)."

## CHAPTER LXXIX.

1. "A man is bound to provide medical attendance for his wife in case of sickness, if she is sick constantly, and the cost for curing the same cannot be ascertained, or if she is sick temporarily and the cost for curing her is ascertainable (Ketuboth 51b)."

2. "A widow is not entitled to receive medical care at the expense of her husband's estate unless she is stricken with a permanent disease and the costs for her cure cannot be ascertained (Ketuboth 52a)."

3. "In the case of a very prolonged sickness, the husband may say to her: "Here is the amount mentioned in the marriage contract; expend the same for medical care, or I will divorce you and give you the money you are entitled to obtain from me in such event" (Maimonides; Ketuboth 52a)."

4. "It is, however, highly improper for a man to do so as against public policy and the rules of ethics (Maimonides)."

## CHAPTER LXXX.

1. "If it is the custom of the locality for women to weave, to sew, to spin wool or flax, it is the duty of every woman to do so, and the earnings realized therefrom belong to the husband. If it is not customary for women of that particular locality to engage in all of the above enumerated works, a man can force his wife to spin wool only (Ketuboth 51a)."

2. "If a woman does more than the custom of the locality requires her to do, such surplus belongs to her (Nedarim 65a)."

3. "Even if a man is wealthy and has many servants in the house, the wife is not permitted to sit absolutely idle, because idleness brings evil thoughts. She cannot, however, be compelled to work the entire day, the nature and the amount of her work all depending upon the amount of wealth possessed by her husband (Ketuboth 51)."

4. "If a man makes a vow to the effect that his wife shall do no work whatsoever, he is bound to divorce her and pay her the sum of money mentioned in the contract of marriage (L. c.)."

5. "And it is the duty of every woman to wash her husband's face, hands and feet, and she must fill up the glass for him and prepare his bed (Ketuboth 61a)."

6. "She must likewise stand before him and render such services to him as to fetch for him some water or a vessel, or take away from before him whatever is not needed by him, and the like."

7. "A woman is not compelled to render any services to her husband's father or to his son. If, however, such father and son are supported by the husband, she is bound to render service to them (Ketuboth 61)."

8. "The kind of services a woman has to render her husband, as mentioned in Section 4 (supra), she must do it in person, even when she has many servants."

9. "It is the duty of a woman whose husband cannot afford to hire a servant, to grind corn, wheat, to bake, wash, cook and suckle her children and feed the cows, but not the oxen."

## CHAPTER LXXIX.

1. "A man is bound to provide medical attendance for his wife in case of sickness, if she is sick constantly, and the cost for curing the same cannot be ascertained, or if she is sick temporarily and the cost for curing her is ascertainable (Ketuboth 52b)."

2. "A widow is not entitled to receive medical care at the expense of her husband's estate unless she is stricken with a permanent illness and the costs for her cure cannot be ascertained (Ketuboth 52a)."

3. "In the case of a very prolonged sickness, the husband may say to her: 'Here is the amount mentioned in the marriage contract; expend the same for medical care, or I will divorce you and give you the money you are entitled to, which is such event.' (Maimonides' Ketuboth 12a)."

4. "It is, however, highly improper for a man to do so as against public policy and the rules of ethics (Maimonides)."

## CHAPTER LXXX.

1. "It is the duties of the locality for women to weave, to sew, to spin wool or flax, it is the duty of every woman to do so, and the courts realized therefrom belong to the husband. If it is not customary for women of that particular locality to engage in all of the above enumerated works, a man can force his wife to spin only (Ketubob 51a)."

2. "If a woman does more than the custom of the locality requires her to do, much surplus belongs to her (Maimonides 12a)."

3. "Even if a man is wealthy and has many servants in the house, the wife is not permitted to sit absolutely idle, because idleness brings evil thoughts. She cannot, however, be compelled to work the entire day, the nature and the amount of her work all depending upon the amount of wealth possessed by her husband (Ketubob 51)."

4. "If a man makes a vow to the effect that his wife shall do no work whatsoever, he is bound to divorce her and pay her the sum of money mentioned in the contract of marriage (L. c.)."

5. "And it is the duty of every woman to wash her husband's face, hands and feet, and she must fill up the glass for him and prepare his bed (Ketubob 61a)."

6. "She must likewise stand before him and render such services to him as to fetch for him some water or a vessel, or take away from before him whatever is not needed by him, and the like."

7. "A woman is not compelled to render any services to her husband's father or to his son. If, however, such father and son are supported by the husband, she is bound to render service to them (Ketubob 61)."

8. "The kind of services a woman has to render her husband, as mentioned in Section 4 (supra), she must do it in person, even when she has many servants."

9. "It is the duty of a woman whose husband cannot afford to hire a servant, to grind corn, wheat, to bake, wash, cook and suckle her child, and feed the cows, but not the oxen."

10. "If the child of a woman dies, she is not bound to nurse the child of a stranger for compensation and give such compensation to her husband (Rabbi Moses Iserlish)."

11. "A woman is not bound to suckle a baby which was born to her husband of his former wife (L. c.)."

12. "If the woman upon her marriage has brought with her a servant, or she has brought with her property sufficient to hire a servant therewith, or if her husband possesses money enough to hire a servant, she is not bound to grind with the hand-mill, nor to bake, nor to wash, nor to feed his cattle (Ketuboth 61a)."

13. "If the wife claims that he can afford to hire a servant, and he claims that he is unable to do so, she must come forth with evidence to prove her contention (Maimonides)."

14. "If a woman gives birth to twins, she cannot be forced to suckle both, but she is bound to suckle one, and the husband must hire a nurse for the other (Yerushalmi; Rabbi Moses Iserlish holds that she must suckle both)."

15. "A man may prevent his wife from suckling the baby of a stranger together with his own baby (Maimonides)."

16. "Furthermore, he may even prevent her from suckling her baby, which she had from her former husband, together with his own (Tur; i.e., if she wants to suckle such other baby more than 24 months, Vide xiii, 5)."

17. "If a woman, because of a quarrel, leaves her husband's house and refuses to return unless her husband will come to call for her, she does not thereby lose her right to support, because she is ready to return, and not deny him any of his privileges, but is ashamed to return of her own accord because she left without his permission (Tur)."

18. "If, however, she refuses to return to her husband unless he first pays all the debts she incurred during such period, she is considered a rebellious woman, and therefore loses her right to be supported (L. c.)."

## CHAPTER LXXXII.

1. "If a woman makes a vow to the effect that she shall not suckle her baby, whether it is a son or a daughter, she is compelled to suckle it until it attains the age of twenty-four months (Ketuboth 59b)."

2. "If the woman says that she will suckle her child, but her husband does not consent thereto, she prevails over him (L. c.)."

3. "A woman that has been divorced is not compelled to suckle her child, but if she is willing she may accept wages for suckling the child, and if she is not willing she may intrust the child into his care (L. c.)."

4. "The above rule of law, however, holds good only when the child is yet very young and is unable to recognize its mother, but if the child is old enough to recognize its mother and it refuses to be suckled by somebody else, although the child is blind, she is forced to suckle him for a period of not less than twenty-four months. The husband, however, must pay for such services (L. c.)."

5. "If a woman suckles a strange child until it reaches the age of recognizing her, she is forced to continue suckling it for a compensation until the child needs no more nursing, because it is harmful for the child to change nurses at such an age (Rabbi Moses Iserlish)."

andronicus publishing company inc.

10. "If the child of a woman died, she is not bound to nurse the child of a stranger for compensation and give such compensation to her husband (Rabbi Moses Isserlish)."

11. "A woman is not bound to suckle a baby--which was born to her husband of his former wife (L. c.)."

12. "If the woman upon her marriage has brought with her a servant, or she has brought with her property sufficient to hire a servant therewith, or if her husband possesses money enough to hire a servant, she is not bound to grind with the hand-mill, nor to bake, nor to wash, nor to feed the cattle (Kethuboth 61a)."

13. "If the wife claims that he can afford to hire a servant, and he claims that he is unable to do so, she must come forth with evidence to prove her contention (Maimonides)."

14. "If a woman give birth to twins, she cannot be forced to suckle both, but she is bound to suckle one, and the husband must hire a nurse for the other (Jerushalmi; Rabbi Moses Isserlish holds that she must suckle both)."

15. "A man may prevent his wife from suckling the baby of a stranger together with his own baby (Maimonides)."

16. "Furthermore, he may even prevent her from suckling her baby, unless she had first her former husband, together with his own (Tur; i.e., if she wants to suckle such other baby more than 24 months, Yiche xiii, 6)."

17. "If a woman, because of a quarrel, leave her husband's house, and refuses to return until her husband will come to call for-her, she does not thereby lose her right to support, because she is ready to return, and not doing him any of his privileges, but is ashamed to return of her own accord because she left without his permission (Tur)."

18. "If, however, she refuses to return to her husband unless he first pays all the debts she incurred during such period, she is considered a rebellious woman, and therefore loses her right to be supported (L. c.)."

## CHAPTER LXXXII.

1. "If a woman makes a vow to the effect that she shall not suckle her baby, whether it be a son or a daughter, she is compelled to suckle it until it attains the age of twenty-four months (Kethuboth 59b)."

2. "If the woman says that she will suckle her child, but her husband does not consent thereto, she prevails over him (L. c.)."

3. "A woman that has been divorced is not compelled to suckle her child, but if she is willing she may accept wages for suckling the child, and if she is not willing she may instruct the child into his duty (L. c.)."

4. "The above rule of law, however, holds good only when the child is yet very young and is unable to recognize its mother, but if the child is old enough to recognize the mother and it refuses to be suckled by somebody else, although the child is blind, she is forced to suckle him for a period of not less than twenty-four months. The husband, however, must pay for such services (L. c.)."

5. "If a woman suckles a strange child until it reaches the age of recognizing her, she is forced to continue suckling it for a compensation until the child needs no more nursing, because it is harmful for the child to change nurses at such an age. (Rabbi Moses Isserlish)."

6. "The rule stated above (Section 3) that a divorced woman is not bound to suckle her child, if such child is unable as yet to recognize her, applies only to a case where her former husband can secure another nurse, but if he is unable to do so, either for the reason that he does not possess the means of hiring a nurse or because no nurse is obtainable, she is bound to suckle her child (L. c.)."

7. "A divorcee is not entitled to support, even though she suckles her child. The husband must, however, give her something in addition to the sum he pays for suckling the child, in order that the child be provided with clothes, food, drink, powder and the like. A pregnant divorcee is not entitled to anything whatever (Maimonides)."

8. "A divorced woman suckles her child for a period of twenty-four months, as prescribed; and then, upon the child being weaned, and the mother being unwilling to part with it, the child is not taken away from her custody, until it attains the age of six full years (Ketuboth 65b)."

9. "In the aforesaid case, the father is bound to support the child while it is in the mother's custody until the age of six years. After the child has attained the above-named age, the father may say: "If the child is not given to me, I will refuse to provide for him" (L.c.)."

10. "The foregoing rules of law refer only to a case where the child is a male, but if the child is a female, she must be in her mother's custody forever (Ketuboth 102b)."

11. "If the father's means are sufficient, the Court has the right to take some of his property in order to support his daughter while she is with her mother. Even though the divorcee is married to someone else, the daughter stays with her and her father is bound to support her (L. c)."

12. "If, however, in the opinion of the Court, it is to the best interests of the daughter to be with her father and not with her mother, she is intrusted to the father and the mother cannot insist on having the daughter intrusted to her (Rabbi Moses Iserlish)."

13. "In any event, if the mother of such daughter dies, her mother's mother is not entitled to the custody of the child in preference to the father (L. c.)"

14. "If, after having weaned the child, whether male or female, the mother is unwilling to have it in her custody, she may not be compelled to do so, but she may give it to her husband, and if the child has no father, she may give it to a public asylum.

## CHAPTER LXXXIII.

1. "If a married woman receives personal injuries, the damages she recovers for her loss of time and for medical treatment belong to the husband, but the damages she recovers for her pain and suffering belong to her (Maimonides)."

2. "The damages a woman recovers for her having been disgraced by the injuries and the amount of money she recovers for the damages actually sustained by her must be apportioned between her and her husband as follows: If the injury sustained was received by her on a part of her body, which is not hidden from view, e.g., on her face, neck, hands, or arms, one-third of the damages thus recovered belong to her, and two-thirds thereof belong to the husband; but if the injuries were inflicted upon a part of her body which is hidden from view, one-third of the damages belong to the husband and two-thirds thereof belong to her (Ketuboth 65b)."

andronicus publishing company, inc.

6. "The rule stated above (Section 3) that a divorced woman is not bound to suckle her child, if such child be unable or refuse to receive nurse, applies only to a case where her former husband can secure another nurse, but is unable to do so, either for the reason that he does not possess the means of hiring a nurse or because no nurse is obtainable, she is bound to suckle her child (L. c.)."

7. "A divorcee is not entitled to support, even though she suckle her child. The husband must, however, pay her according to his means and station, in addition to the sum she receives for suckling the child, in order that the child be provided with clothes, food, drink, powder and the like. A pregnant divorcee is not entitled to anything whatever (Maimonides)."

8. "A divorced woman suckles her child for a period of twenty-four months, as prescribed; and then, upon the child being weaned, and the mother being unwilling to part with it, the child is not taken away from her custody, until it attains the age of six full years (Katubeth 65b)."

9. "In the aforesaid case, the father is bound to support the child while it is in the mother's custody until the age of six years. After the child has attained the above-named age, the father may say: "If the child is not given to me, I will refuse to provide for him" (L. c.)."

10. "The foregoing rules of law refer only to a case where the child is a male, but if the child is a female, she must be in her mother's custody forever (Matuban 102b)."

11. "If the father's means are sufficient, the Court has the right to take steps of its property in order to support his daughter while she is with her mother. Even though the divorcee is married to someone else, the daughter stays with her and her father is bound to support her (L. c.)."

12. "It, however, in the opinion of the Court, it is to the best interests of the daughter to be with her father and not with her mother, she is intrusted to the father and the mother cannot insist on having the daughter intrusted to her (Bobli Meeza Iserilah)."

13. "In any event, if the mother of such daughter dies, her mother's mother is not entitled to the custody of the child in preference to the father (L. c.)."

14. "If, after having weaned the child, whether male or female, the mother is unwilling to have it in her custody, she may not be compelled to do so, but she may give it to her husband, and if the child has no father, she may give it to a public asylum."

## CHAPTER LXXXIII.

1. "If a married woman receives personal injuries, the damages she recovers for her loss of time and for medical treatment belong to the husband, but the damages she recovers for her pain and suffering belong to her (Maimonides)."

2. "The damages a woman recovers for her having been divorced by the injuries and the amount of money she recovers for the damages actually sustained by her must be apportioned between her and her husband as follows: If the injury sustained was received by her on a part of her body which is hidden from view, e.g., on her face, neck, breast, or arms, one-third of the damages thus recovered belong to her, and two-thirds thereof belong to the husband; but if the injuries were inflicted upon a part of her body which is hidden from view, one-third of the damages belong to the husband and two-thirds thereof belong to her (Katubeth 66b)."

3. "The damages to which the husband is entitled are given to him immediately, but with the money she is entitled to recover, real property, is bought, and the husband is entitled to the usufruct thereof."

4. "A woman who receives personal injuries cannot give a release therefor, either for the items of damages belonging to her husband or for the items of damages belonging to her."

5. "The foregoing rules of law refer only to a case where the injuries were inflicted upon the woman by a stranger. If the husband himself inflicts injuries upon his wife, he must immediately pay her the entire amount of damages she is entitled to recover for actual damages sustained by her, for the disgrace caused to her and for the pain and suffering she sustained. All the damages she thus recovers belong to her absolutely, and the husband is not entitled to the usufruct thereof."

6. "The husband is likewise bound to provide her with medical treatment, as he is bound under the law to do in case of her being ill."

## CHAPTER LXXXIV.

1. "All articles found by a woman belong to her husband (Ketuboth 65b)."

2. "The articles found by a doubtful divorcee belong to herself (Baba Metziah 12b)."

## CHAPTER LXXXV.

1. "Guaranteed property of a woman is the property she beings upon her marriage and for which the husband becomes personally liable. If she brings cattle and they die, or their value increases or diminishes, or if they are lost or stolen, it all either inures to the benefit of her husband ot it is his loss (Yebamoth 66a)."

2. "Unguaranteed property is the property belonging to a woman for which the husband did not become personally liable, and if the property advance in value, it inures to her benefit; and if it diminishes, it is her loss (L. c.)."

3. "If a husband is desirous of bringing legal action against a person, involving the property of his wife, he must first obtain a power of attorney from her before he commence such action (Gittin 48b)."

4. "If, however, the action involves his wife's realty, to the usufruct of which he is entitled, he needs no power of attorney before commencing action, because of the fact that he can sue without a power of attorney for the usufruct; he may likewise sue for the real property, for without the realty legally belonging to her, he cannot enjoy the usufruct."

5. "A woman borrows a cow from another, thereafter she becomes married and the cow dies in her husband's possession, he is not liable therefor, even if it occured through his gross negligence, because he is considered as a purchaser. The woman, however, must pay for such cow as soon as she gets sufficient funds for the same."

6. "If, as aforesaid, the woman upon her marriage has informed her husband that the cow was borrowed by her, he becomes liable therefor in her stead (L. c.)."

andronicus publishing company, inc.

5. "The damages to which the husband is entitled are given to his immediately, but the wife may be entitled to recover, real property, to which the husband is entitled to the USUFRUCT thereof."

6. "A woman who receives personal injuries cannot give a release therefore, either for the items of damages belonging to her husband or for the items of damages belonging to her."

7. "The foregoing rules of law refer only to a case where the injuries were inflicted upon the wife by a stranger. If the husband himself inflicts injuries upon his wife, he must immediately pay for the entire amount of damage she is entitled to recover for actual damage sustained by her, for the aggravation caused to increase for the pain and suffering she sustained. All the damages she thus recovers belong to her absolutely, and the husband is not entitled to the usufruct thereof."

8. "The husband is likewise bound to provide her with medical treatment, as he is bound under the law to do in case of her being ill."

## CHAPTER ELEVEN.

1. "All articles found by a woman belong to her husband (Section 2(b))."

2. "The article found by a married divorcee belong to herself (See Article) 123)."

## CHAPTER TWELVE.

1. "Guaranteed property of a woman is the property she brings upon her marriage and for which the husband becomes personally liable. If the bring cattle and they die, or their value increases or decreases, or they are lost or stolen, it all matter inures to the benefit of her husband or it is his loss (Section 66)."

2. "Unguaranteed property is the property which she brings to a woman for which the husband did not become personally liable, and if the property advances in value, it inures to her benefit and if it diminishes, it is her loss (L. c.)."

3. "If a husband is desirous of bringing legal action against a person, involving the property of his wife, he must first obtain a power of attorney from her before he commence such action (Article 400)."

4. "If, however, the action involves his wife's realty, to the exclusion of either for the usufruct he may himself for the real property, for without the realty legally belonging to her, he cannot enjoy the usufruct."

5. "A woman borrows a cow from another, thereafter she becomes married and the cow dies in her husband's possession, he is not liable therefor, even if it occurred through his gross negligence, because he is considered as a bailee. The woman, however, must pay for such cow as soon as she gets sufficient funds for the same."

6. "If, as aforesaid, the woman upon her marriage has informed her husband that the cow was borrowed by her, he becomes liable therefor (L. c.)."

7. "If a man sells real property to his wife, if the money wherewith she bought such property was not concealed by the woman, but the husband was aware of the fact that she was in the possession of such money, the sale is valid. Title to the property then vests in the woman, and the husband is entitled to the usufruct. If the wife's possession of the money was not known to the husband, the sale is invalid, because the husband may claim that he transferred such property simply in order to discover the money his wife has concealed from him and not with the intention to convey such property to her."

8. "With the money mentioned in the last named instance, other real property is bought and the husband is entitled to the usufruct. If, however, the husband makes a positive claim to the effect that the money in his wife's possession originally belonged to him, he is entitled to the same (Maimonides)."

9. "If one makes a gift to a woman on the condition that her husband shall have no claim thereto, the condition is invalid and the husband is entitled to the usufruct thereof. If, however, the donor at the time he made the gift to her expressly stated that such gift was given to her for the purpose of being utilized by her for a certain particular object, such as to buy clothes or the like, or he said that she can do therewith whatever she desires without obtaining her husband's consent, her husband has no rights whatever in the premises (Nedarim 18a)."

9a. "If the father makes a gift to her on condition that the husband shall have no benefit thereto, and afterwards the father died and the daughter is the sole heir of the estate, the husband is entitled to the usufruct thereto (Ramban)."

10. "If some money or other personal property is found in the possession of a married woman, and she claims that it was given to her as a gift, and he contends that she saved it from her work and consequently belongs to him, her contention prevails; and with such money or personalty, real property must be bought and the husband is entitled to the usufruct (Maimonides)."

11. "If, however, in the last named instance, she claims that the property was given her as a gift with the express condition that her husband should have no claim thereto, but that she may do therewith as she pleases, she must come forward with evidence to prove such contention (L. c.)."

## CHAPTER LXXXVI.

## NOT TO RECEIVE BAILMENTS FROM WOMEN OR MINORS.

1. "It is forbidden to accept articles for safekeeping from a married woman, but if one does accept such articles he must return them to her (Baba Bathra 52b)."

2. "If, however, the woman says before she dies that the articles belong to such and such a man, her statement is accepted as true (Tur)."

3. "If the woman who has given the bailment went beyond the seas, and her husband came and made a demand upon the bailee that he return the articles to him for the reason that the articles had been stolen from him by his wife, it is the duty of the bailee not to return them to the husband before the woman returns or before she dies (L. c.)."

Lexicon publishing company, inc.

4. "If the woman at the time of her death says to the bailee that the articles belong to such and such a person, if the woman is considered a trustworthy woman in his estimation, he must return the articles to the man designated by her. If she is not trustworthy in the opinion of the bailee, he must return the articles to the husband (L. c.)."

5. "There is an opinion holding that if the woman takes an active interest in the conduct of her husband's business, her claim made to the effect that the articles belong to a certain person is not accepted as true (L. c.)."

6. "Nevertheless, even in the last named instance, it is the duty of the bailee to return the bailment to the woman during her lifetime (L. c.)."

7. "Even if the woman takes no active interest in the conduct of her husband's business, if the bailee returns the bailment to the husband of the bailor, he thereby becomes exempt from liability (Ramo)."

8. "If a husband borrows money from his wife and thereafter divorce her, she cannot collect from him. Afortiori does this rule of law apply to a case where he has not divorced her (Baba Bathra 51)."

9. "There is, however, an opinion to the effect that the above stated rule of law applies only to a case where the money he borrowed was concealed from him (he not knowing that she has money), but if the money was not concealed by her from him, he must repay her the loan, even after he has divorced her."

10. "If the woman can prove that money was given to her on condition that the husband shall have no right in it, he must repay her the money."

11. "If a woman sell or pawn personal property without the consent of her husband; if the woman takes no active interest in the conduct of her husband's business, and if she does not regularly sell anything that belonged to her husband, the husband can take away the property without returning the money to the buyer."

12. "If the buyer says and takes an oath that he did not know that it belonged to the husband, he cannot take away this property from him, even if he wants to return the money to the buyer, claiming that she stole it from him."

13. "If the husband seizes the personal property the Court cannot take it away from him."

14. "In that case it is doubtful in the law if the husband need to return the money to the buyer or not."

15. "If she sells regularly, even knowing that it belonged to the husband, the deal is valid."

## CHAPTER LXXXVIII.

### THE PROPERTY A WOMAN IS PERMITTED TO TAKE UPON MARITAL RELATIONS BEING SEVERED.

1. "A woman whose bonds of matrimony have been severed either by death or divorce is entitled to obtain possession of her property without having to take an oath, and it is immaterial whether such property was guaranteed by her husband or not (Baba Bathra 42b)."

gorgias publishing company, inc.

4. "If the woman at the time of her death owes to the bailee that the article is held to such woman a person, if the woman is concealed a fraudulently woman in his estimation, he must return the article to the man designated by her. If she is not fraudulently in the relation of the bailee, he must return the article to the husband (L. c.)."

5. "There is an explanation that if the woman takes no active interest in the conduct of her husband's business, her claim made to the effect that the article belongs to a certain person is not accepted as true (L. c.)."

6. "Nevertheless, even in the last named instance, it is the duty of the bailee to return the bailment to the woman during her lifetime (L. c.)."

7. "Even if the woman takes no active interest in the conduct of her husband's business, if the bailee returns the bailment to the husband of the bailor, he thereby becomes exempt from liability (Beno)."

8. "If a husband borrows money from his wife and absconds or leaves her, she cannot collect from him. Mortiaut does this rule of law apply to a case where he has not divorced her (Beno, Hanna et al)."

9. "There is, however, an opinion to the effect that the above stated rule of law applies only to a case where the money be borrowed was concealed from him (he not knowing that she has money), but if the money was not concealed by her from him, he must repay her the loan, even after he has divorced her."

10. "If the woman can prove that money was given to her on condition that the husband shall have no right in it, he must repay her the money."

11. "If a woman sell or pawn personal property without the consent of her husband; if the woman takes no active interest in the conduct of her husband's business, and if she does not regularly sell anything that belonged to her husband, the husband can take away the property without returning the money to the buyer."

12. "If the buyer says and takes no oath that he did not know that it belonged to the husband, he cannot take away this property from him, even if he wants to return the money to the buyer, claiming that she stole it from him."

13. "If the husband values the personal property the Court cannot take it away from him."

14. "In that case it is doubtful in the law if the husband need to return the money to the buyer or not."

15. "If she sells regularly, even knowing that it belonged to the husband, the deal is valid."

## CHAPTER LXXXVIII.

## THE PROPERTY A WOMAN IS PERMITTED TO TAKE UPON MARITAL RELATIONS BEING SEVERED.

1. "A woman whose bonds of matrimony have been severed either by death or divorce is entitled to obtain possession of her property without having to show an oath, and it is immaterial whether such property was guaranteed by her husband or not (Beno Hanna 45)."

2. "The property which was not guaranteed by the husband must be taken by her in whatever state it now is, although it has become much worn out and unfit to accomplish the purpose for which it was made (Baba Bathra 55)."

3. "Even if the unguaranteed property was entirely lost, the husband is not liable therefor. And if the property advances in value, it inures to her benefit (Ketuboth 55)."

5. "However, the custom now prevalent is that if the articles are still fit for the purpose for which they were originally intended, although they have been much worn out, she takes them in their present condition. If they are unfit for the purpose they were originally intended the husband must pay the valuation put upon them at the time the marriage took place. And if the articles advance in value, she gets for them according to the valuation put upon them at the time the marriage took place (Tur)."

6. "The above rules of law refer to cases where it is customary to write in the contract of marriage: "So and so has brought with her upon her marriage such and such an article valued at so much, another article valued at so much, etc." But in the places where it is not customary to specify each article and the value thereof, but it is generally stated that such and such a woman brought with her articles to the valuation of so much and so much, the sum of money thus mentioned becomes a debt for which the husband is liable. Therefore, even if the articles are now at the time the bonds of matrimony are severed, a new valuation thereof must be placed upon them; and if there is any deterioration it must be made good by the husband, and if there is any advance in value, it inures to his benefit, and the first valuation is not considered at all (L. c.)."

7. "If the woman insists on taking her articles and the husband insists on paying her their value, her contention prevails. The same rule of law applies to the case where she has brought cattle and they brought forth young, if such cattle were not guaranteed by the husband (Ketuboth 55b)."

8. "Furthermore, if at the time of her marriage she has brought two vessels which were then valued at one thousand zuz, and for which her husband became personally liable, and when the bonds of matrimony are dissolved the price of such vessels has advanced and they are now valued at two thousand zuz, she takes one vessel for the one thousand zuz she is entitled to, and if she so chooses she has a right to take the other vessel and pay to her husband its present value (one thousand zuz) (Ketuboth 67b)."

9. "If the vessels are still fit for the purpose for which they were intended, she has no right to insist that her husband shall pay her their value, but she must take such vessels."

10. "If the woman at the time of her marriage was possessed of real property, and when the bonds of matrimony were dissolved there were some products of the soil attached thereto, she takes the realty together with such products, although the products are ripe enough to be severed therefrom (Ketuboth 79b)."

12. "If the husband has expended some money on his wife's property, which was not guaranteed by him, and thereafter has divorced her, whether he realized much of the fruit of such property and ate little thereof, or whether he realized little and ate much thereof, no account is to be had in order to ascertain the amount expended by him and the amount he enjoyed (Ketuboth 79b)."

13. "If, however, he incurred expenditures, but did not enjoy the products of the soil to any extent whatever, an account is to be had, and he is entitled to a return of such expenditures, by taking an oath to corroborate his claim (L. c.)."

Loeiow publishing company inc.

14. "The foregoing rule of law applies likewise to a case where she inherited property from some distant place and the husband expended some money in bringing over the property, and with the proceeds realized from the sale of such property he brought realty and ate the fruit thereof."

15. "If the woman became heiress to property located in a far-off place, and the husband went there to bring the property over and thereby expended large sums of money, and thereafter he divorced her, he takes an oath as to how much he thus expended and recovers the same from her. He cannot, however, recover more than the property has advanced in value by reason of his having brought it over to his own city. This rule of law has application also to a case where he has taken some of the property, sold it and used the proceeds thereof, for the reason that he has enjoyed, not the fruit thereof, but the principal itself."

16. "The foregoing rules of law apply only to a case where the husband voluntarily divorces his wife. If the woman was rebellious against him, as a result of which he has divorced her, it is immaterial whether he has partaken of the products of the property or not. In either event he takes an oath as to the amount expended by him and recovers the same. If the expenditures exceed the amount the property has advanced in value, he recovers the expenditures, and if the advancement in value is more than the expenditures, he recovers the amount of the advance (Tur)."

17. "If a man leases his wife's estate to others and thereafter divorces her, if the husband himself was included among the lessees, the lease is terminated by the divorce, because the agreement by them was to be co-extensive with his rights as they looked forward to him. A valuation of the expenditures and of what they realized is then had, and they are at a disadvantage. If, however, the husband himself was not included among the lessees, they looked forward to the property and not to him, and therefore the law applicable to lessees applies to them likewise (Ketuboth 80a)."

18. "If, however, the lessees had no knowledge that the property thus leased belonged to the woman, they have the rights of the ordinary lessee in any event (Tur)."

## CHAPTER LXXXIX.

## THE DUTY OF A HUSBAND TO PROVIDE FOR HIS WIFE'S FUNERAL EXPENDITURES.

1. "If a woman dies during the lifetime of her husband, he is bound to provide her with a grace, and he must pay all other expenditures incidental thereto. He must likewise buy a tombstone to be put on her grave. If it is customary to make a eulogy for the dead, he must do so. In brief he must do whatever is customary to be done in that locality (Ketuboth 46b)."

2. "If the husband refused to incur the burial expenditures and someone else has done so, the Court collects the expenditures incurred from the husband and turns them over to such person (L. c.48)."

3. "If the dead woman's husband went abroad, the Court has a right to sell some of his property for the purpose of burying her, and the Court is not bound to make the announcement of the sale generally provided for in cases of sale (L. c.)."

4. "A widow is not to be provided with burial at the expense of her husband's estate. It is the duty of her heirs, who are entitled to inherit from her the amount she was to obtain in accordance with the provisions of the contract of marriage to provide her with the burial (L. c. 95)."

Hubbs company inc.

16. "The foregoing rule of law applies likewise to a case where the imported property [was some distant place and the husband expended some money to dispose over the property, and with the proceeds realized from the sale of such property he brought] and ate the fruit thereof."

16. "If the woman became betrose to property located in a far-off place, and the husband went there to bring the property even and thereby expended large sums of money, and therefore be divorced her, be taken on oath as to how much he thus expended and recover the same from her. He cannot, however, recover more than the property has advanced in value by reason of his having brought it over to his own city. This rule of law has application also to a case where to be taken care of the property, and it and used the proceeds thereof, for the person that he has engaged not the fruit thereof, but the principal itself."

16. "The foregoing rule of law apply only to a case where the husband voluntarily divorces his wife. If the woman was forcibly against him, as a result of which he has divorced her. It is immaterial whether he has partaken of the products of the property or not. In either event he [must on oath as to the amount expended by him and recovers the same. If the expenditures exceed the amount the property has advanced in value, he recovers the expenditure, and if the advancement in value is more than the expenditure, he recovers the amount of the advance (Ibr)."

17. "If a man leases his wife's estate to others and thereafter divorces her, if the husband divorced was induced under the lessee, the lessee is [entitled to the crops, because the agreement by them was to be co-extensive with his rights as they looked forward to him. A lessee of the expenditure and of what they realized in them had, and they are at a disadvantage. If, however, the husband himself was not included among the lessees, they looked forward to the property and not to him, and therefore the law applicable to lessees applies to them likewise (Kethoth 80a)."

18. "If, however, the lessee had no knowledge that the property time leased belonged to the woman, they have the rights of the ordinary lessee in any event (Ibr)."

## CHAPTER LXXXIX.

### THE DUTY OF A HUSBAND TO PROVIDE FOR HIS WIFE'S FUNERAL EXPENDITURE.

1. "If a woman dies during the lifetime of her husband, he is bound to provide her with a grave, and he must pay all other expenditures [entailed thereby. He must likewise buy a tombstone for be put on her grave. If it is customary to make a melody for the dead, he must do so. In brief he must do whatever is customary to be done in that locality (Kethoth 66b)."

2. "If the husband refused to incur the burial expenditure and someone else has done so, the Court collects the expenditure incurred from the husband and turns them over to such person (L. c.68)."

3. "If the dead woman's husband went abroad, the Court has a right to sell some of his property for the purpose of burying her, and the Court is not bound to make the advancement of the sale generally provided for in cases of sale (L. c.)."

4. "A widow is not to be provided with burial at the expense of her husband's estate. It is the duty of her heirs, who are entitled to inherit from her the amount she was to obtain in accordance with the provisions of [contract of marriage to provide for with the burial (L. c. 90)."

## CHAPTER XC.

### THE HUSBAND AS HIS WIFE'S HEIR; A WOMAN SELLING PROPERTY TO WHICH HER HUSBAND HAS SOME RIGHTS.

1. "A husband is the legal heir of his wife whether to property which was guaranteed by him or not (Ketuboth 46b)."

2. "He is entitled to inherit only such property of which she was possessed at the time of her death, but not when she only has a potential right to property; as when she was the heir to some property and she died during the lifetime of the one from whom she inherits (Baba Bathra 113a)."

3. "A man makes a will to the effect that his daughter shall inherit from him a certain amount of money on condition that in the event of her death she leaves living issue. The daughter becomes married, bears a child and dies. After her death the child dies, and after the child's death, her father dies. In such event the husband is entitled to the inheritance of his child (Rabbi Moses Iserlish)."

4. "If at the time the woman was married someone was indebted to her in a certain sum of money, and she died before she collected such debt, her husband does not inherit it (L. c.)."

5. "If, however, a woman makes a loan out of her property which was not guaranteed by her husband, and she dies before collecting the same, her husband inherits the same (Tur)."

6. "If a woman makes a loan out of property to which her husband has no rights whatever and she dies before collecting such debt, her husband does not inherit it (L. c.)."

7. "If a man marries a woman forbidden to him by negative command and she dies, he becomes her legal heir, because the betrothal is valid in such cases (Maimonides)."

8. "If a woman rebels against her husband and she dies, her husband becomes her legal heir (Rabbi Moses Iserlish)."

9. "If by reason of a vow or any other cause, a man refuses to cohabit with his wife, he is not entitled to inherit her estate after her death (L. c.)."

10. "If a house falls in upon a man and his wife, and it cannot be ascertained as to which of them died first, if they leave no issue of their marriage, the husband's heirs inherit the entire amount mentioned in the contract of marriage, the woman's heirs inherit her property which was not guaranteed by the husband, and both heirs divide equally among them the property left by the woman which is guaranteed by the husband (Baba Bathra 158b)."

11. "If a woman sells some of her property which was not guaranteed by the husband, the husband may recover from the purchasers all the products of such property, but not the property itself (Ketuboth 78b)."

12. "If the woman dies during the lifetime of her husband, he recovers the property from the purchasers without having to pay anything for it."

13. "If, in the last named instance, the money which she has received from the purchasers is still found in her possession or if she is possessed of money which may be reasonably presumed to be the very money she has received from the purchasers, she must return such money to them (Tur)."

...publishing company, inc.

"CHAPTER 10.

THE HUSBAND AS HIS WIFE'S HEIR & WIFE'S HEIR.

THE PROPERTY TO WHICH HER HUSBAND
HAS SOME RIGHTS."

1. "A husband is the legal heir of his wife whether to property which was guaranteed by him or not (Hedaya 445)."

2. "He is entitled to inherit only such property of which she was possessed at the time of her death, but not when she only has a potential right to property as when she was the heir to some property and she died during the lifetime of the one from whom she inherits (Hedaya 112a)."

3. "A man makes a will to the effect that his daughter shall inherit from him a certain amount of money on condition that in the event of her death she leaves living issue. The daughter becomes married, bears a child and dies. After her death the child dies, and after the child's death, her father dies. In such event the husband is entitled to the inheritance of his child (Hedaya Inheritance)."

4. "If at the time the woman was married nonsense was indicted to her in a certain sum of money, and she died before she collected such debt, her husband does not inherit it (L. c.)."

5. "If, however, a woman makes a loan out of her property which her husband was not guaranteed by her husband, and she dies before collecting the same, her husband inherits the same (Ibn)."

6. "If a woman makes a loan out of property which her husband has no rights whatever and she dies before collecting such debt, her husband does not inherit it (L. c.)."

7. "If a man marries a woman forbidden to him by positive command and she dies, he becomes her legal heir, because the betrothal is valid in such cases (Mohamedan)."

8. "If a woman rebels against her husband and she dies, her husband becomes her legal heir (Hedaya Inheritance)."

9. "If by reason of a vow or any other cause, a man refuses to cohabit with his wife, he is not entitled to inherit her estate after her death (L. c.)."

10. "If a house falls in upon a man and his wife, and it cannot be ascertained, as to which of them died first, if they were in law of their marriage, the husband's heirs inherit the entire amount mentioned in the contract of marriage, the woman's heirs inherit her property which was not guaranteed by the husband, and both heirs divide equally among them the property left by the woman which is guaranteed by the husband (Hedaya Inheritance 108b)."

11. "If a woman sells some of her property which was not guaranteed by the husband, the husband may recover from the purchasers all the products of such property, but not the property itself (Hedaya Sales)."

12. "If the woman dies during the lifetime of her husband, he recovers the property from the purchasers without having to pay anything for it."

13. "If, in the last named instance, the money which the two received from the purchasers, she must return such money to them (Ibn)."

14. "If money may be bequeathed promised to be the very money she received from the purchasers, the husband is still found in her possession or it she is possessed of property as when she was the heir to some property and she died during the lifetime of the one from whom she inherits (Hedaya 112a)."

15. "A husband is the legal heir of his wife whether to property which was guaranteed by him or not (Hedaya 445)."

14. "If the woman becomes a widow or is divorced, the sale becomes valid (Tur)."

15. "If during the lifetime of the woman the husband wants to build on the property or to destroy some structure found thereon, the purchasers may prevent him from doing so (Nimuke Joseph)."

16. "If the husband admits that she has sold the property with his consent, or there are witnesses to that effect, the sale is valid and the husband cannot recover the property from the purchasers, because in such an event she is deemed to act for him as his agent (Tur)."

18. "If a woman, at the time of her illness, orders that some of her wearing apparel shall be given away to the poor and the husband consents thereto, he cannot retract. If, however, the apparel was to be given to rich people, he may retract (Rabbi Moses Iserlish; Yebamoth 76b)."

19. "If a woman, after her marriage, sells or give away some of her property which was guaranteed by her husband, the conveyance is ineffective, and it is immaterial whether she conveys it to a stranger or to her husband (Yebamoth 76b)."

20. "There is an opinion that when the woman thereafter becomes a widow or is divorced by her husband the sale becomes valid (Nimuke Joseph)."

21. "Likewise, if the husband sells his wife's property, whether it is guaranteed by him or not, the sale is invalid (L. c.)."

22. "A man has no right to either sell or pledge the personal property of his wife, which was guaranteed by him. It is, however, disputed whether the sale of such property by him is valid or not (Maimonides and Tur)."

23. "The wearing apparel which a woman brings upon her marriage is treated like unguaranteed property, and therefore if it is sold or pledged by the husband, such sale or pledge is absolutely invalid (Rabbi Moses Iserlish)."

24. "If in the above stated rule of law the husband claims that he has sold or pledged the property with her consent, or if he claims that he has turned over the proceeds of such sale to his wife, his statement is accepted as true if substantiated by an oath (Rashba)."

25. "The personal property given to a woman by her husband is treated in law like guaranteed property which may not be sold by him (vide Section 21, supra). This rule of law applies also to personality bought by him for her, but which has not as yet come into her possession (Maimonides)."

26. "The husband cannot sell such personalty even if he is unable to support his family, and it is immaterial whether such apparel is worn by her on Sabbaths or on holidays, or whether they are worn by her on week days (Tur)."

27. "A man is permitted, however, to sell his wife's jewelry given to her by himself, if he needs the money to support his family therewith (L. c.)."

28. "For the purpose of support, a man is permitted to sell his wife's jewelry or wearing apparel that were given to her by relatives and invest the proceeds and use the interest thereof (L. c.)."

29. "If the man and his wife sell the unguaranteed property, whether the sale was made first by him and thereafter by his wife, or it was first made by his wife and thereafter by him, the sale is valid (Baba Bathra 90a)."

30. "If a woman conveys by sale or gift her unguaranteed property to her husband, the conveyance is valid, and she cannot thereafter claim that she has made such conveyance in order to oblige her husband (L. c.)."

31. "Concerning property other than that mentioned in the foregoing rule of law, the conveyance made to the husband is invalid, because she may claim that she has done so in order to oblige her husband; e.g., guaranteed property, whether realty or personalty, set aside by the husband to be applied for the payment to her of the sum mentioned in the contract of marriage, or realty conveyed to her in the contract of marriage, or realty which she brought of her own (Gittin 55b)."

32. "If a man says to his wife that she can do whatever she sees fit with her wearing apparel or with her jewelry and she sells them, the sale is invalid, because the permission thus given referred only to a loan or to a bailment, but not to a sale (Rabenu Asher)."

## CHAPTER XCI.

## RELEASE OF DEBT BY WOMAN

1. "If a woman upon her marriage brings in a debt due her from a certain party on a promissory note, and she releases her debtor after her marriage, the release is ineffective, and therefore her statement is not accepted as true when she claims that the debt has been paid. The same rule of law applies to an oral debt due her (Ketuboth 85b)."

2. "If real property was collected for her debt, and afterwards she married and she died and the husband inherit the property, and the borrower wants to pay the debt and recover the property, this cannot be returned. The same rule of law applies when the woman was indebted to another and collected from her real property, and after the marriage, the husband wants to recover the same."

3. "If a widow has a daughter who is engaged, and her mother promises dowry to the bridegroom, and afterward the widow marries and transfers the entire estate to her husband, the bridegroom is entitled to collect the amount promised to him from the estate (Ramo)."

4. "A gives a field as a gift to an unmarried woman with the condition that she may use same as long as she lives, and after her death the field is to be given over to B, but before the woman died she sold the field to C or married him and as a result thereof the field is transferred to her husband (C). B cannot recover the field from C."

5. "However, if the woman was married to C at the time when the gift was made, then B can recover the field from C (Baba Bathra 137)."

6. "A woman is indebted in a certain sum and her creditors hold nothing in writing from her. Thereafter she is married and as a result thereof her property is transferred to her husband. Her debtors cannot collect their debt from such property, for the law is well established that for an oral debt the property conveyed by the debtor cannot be recovered (Baba Bathra 139a)."

7. "If, however, the money she thus borrowed still remains intact in her possession, her husband must return the same to her creditors (Rabbi Moses Iserlish)."

8. "The creditors of the woman have also a right to prevent such marriage in order not to lose their money thereby, although the time for the payment of such debts has not yet been reached (Beth Joseph)."

9. "This law is in doubt if the husband has to pay the oral debt or not, therefore, possession is nine points of the law, and if the creditor seized the amount of the debt of the husband, he is not bound to return it."

10. "If the creditors of a woman have some legal notice evidencing such indebtedness, they may collect their debts from the dowry she brought to her husband (Baba Bathra 139a)."

11. "A send presents to B, his intended bride, and thereafter B retracts and becomes the wife of C. A has a right to collect the value of such gifts from the property held by C, because it is considered like a debt which is evidenced by a promissory note (Rabbi Moses Iserlish)."

12. "Some Sages hold that if a woman brought as dowry personal property, her creditor, even with a promissory note from her, cannot collect from the dowry."

13. "If the woman brings something which it is afterward found does not belong to her, it must be returned."

14. "Any fine, tax or pardon money the husband is bound to pay for his wife, even if this happened before he had married her."

15. "Damages or borrowing not for support, or speculating in buying and selling, and charity promises, even after they married, the husband is not responsible for same because if the husband be bound to pay such debts, she could, after having a quarrel with him, run into debt and make him pay for the same in revenge."

16. "If the woman borrows money for support, the husband is responsible to pay."

## CHAPTER XCII.

### HUSBAND'S RELEASE OF USUFRUCT AND INHERITANCE

1. "If a man, either in writing or verbally, relinquishes his right to the property of his intended bride, such release is valid."

2. "The bride may thereafter sell or make a gift of the said property, and such sale or gift is valid (Ketuboth 83a)."

3. "If no sale has been made, the husband is entitled to the usufruct of the property, and if she dies he inherits her estate."

4. "If a husband makes an agreement with his wife to the effect that he shall not inherit her estate, his agreement is invalid (L. c.)."

## CHAPTER XCIII.

### A WIDOW'S RIGHT TO SUPPORT.

1. "The amount mentioned in a marriage contract is equivalent to a debt which has not yet become due, and cannot be collected in the husband's lifetime unless he has obtained a divorce (Rabbi Moses Iserlish)."

2. "A widow is entitled to support out of the estate belonging to her husband during her widowhood, although nothing to that effect has been mentioned in the contract of marriage (Ketuboth 83a)."

Lantern publishing company inc.

6. "Sole law is to decide if the husband has to pay the oral dowry or not, therefore, no action is also permitted by law, and if the estimation valued the amount of the dowry husband, he is not bound to return it."

12. "If the creditors of a woman have used legal notice evidence for such indebtedness, they may collect their dues from the dowry [illegible] her husband [from dowry rights]."

11. "A book promises to 3, his intended bride, and thereafter I retracts and becomes the wife of C. A has a right to collect the value of such gifts from the property held by C, because it is considered like a debt which is evidenced by a promissory note (Book Mosse Inscribed)."

12. "Once Baron held that if a woman produced as dowry [illegible] property, her creditor, even with a promissory note from her, cannot collect from the dowry."

13. "If the young Syrian mentioned which it is alleged found dear not belong to her, it must be returned."

14. "Any time, tax or person money the husband is bound to pay for his wife, even if this expensed before he not married her."

15. "Damage or betrothing not for support, or separating in marriage, and shortly promised, even after they married, the husband is not responsible for some because if the husband be bound to pay such debts, she could after having a quarrel with him, run into debt and make him pay for those he returns."

16. "If the woman borrows money for support, the husband is responsible to pay."

## CHAPTER XXII.

### HUSBAND'S RELEASE OF DOWRY AND INDEMNITARIES

1. "If a man, either in writing or verbally, relinquishes his rights to the property of his intended bride, such release is valid."

2. "The bride may thereafter sell or make a gift of the said property, and such sale or gift is valid (Esterbook 52a)."

3. "If no sale has been made, the husband is entitled to the usufruct of the property, and if she dies he inherits her rights."

4. "If a husband makes an agreement with his wife to the effect that he shall not inherit her estate, the agreement is invalid (L. c.)."

## CHAPTER XXIII.

### A WIDOW'S RIGHT TO SUPPORT.

1. "The amount mentioned in a marriage contract is equivalent to a debt which has not yet become due, and cannot be collected in the husband's lifetime unless he has obtained a divorce (Book Mosse Inscribed)."

2. "A widow is entitled to support out of the estate belonging to her husband during her widowhood, although nothing to that effect has been mentioned in the contract of marriage (Esterbook 52a)."

3. "Even if the husband at the time of his death has said that his widow shall not be supported out of his estate, such provision has no effect, and the heirs cannot force her to accept the amount mentioned in her contract of marriage in order not to be bound to support her. The heirs are bound to support the widow as long as she makes no demand to obtain payment on the contract of marriage."

4. "Where a man dies leaving a widow and a daughter surviving, either from her or from a former wife, and the estate is not sufficient to support both, the widow is entitled to preference, and the daughter must, if necessary, seek charity (Baba Bathra 140)."

5. "It is held by other authorities, however, that the estate, whether large or small, is to go to the support of both equally until the estate is exhausted."

6. "If, however, the daughter marries and the estate has gone to her husband, it is the duty of the husband to support the widow (Tur)."

7. "If, however, at the time of the marriage the husband made an agreement with his wife that she shall receive no support from his estate during her widowhood, or if it is the custom of the locality that a widow is not entitled to support, the heirs are not compelled to support her (Maimonides)."

8. "The Court may rule that the widow is not entitled to support from the estate."

9. "If a widow demands the sum provided for her in the marriage contract by legal action, she is not entitled to support (Ketuboth 54a)."

10. "But if she makes a demand without going to Court, she does not thereby lose her right to support (Tur)."

11. "There is an opinion, however, that a woman does not lose her right to support by demanding her rights under the contract of marriage through Court, if she was forced to do so, as when the heirs refuse to support her, or when the heirs deceive her by making false representations to her to the effect that a certain man is willing to marry her, and as a result thereof she demanded her rights under the marriage contract, or the like (L. c.)."

12. "If marriage proposals are made to a widow and she accepts such proposals, she does not thereby lose her right to support (L. c.)."

13. "If a widow is engaged to be married, she loses her rights of support."

14. "If a widow commits an adulterous act, she does not lose her right to support thereby (L. c.)."

15. "If a woman releases her husband from the payment of her of the amount mentioned in her contract of marriage, and thereby loses her right to support during her widowhood. It is disputed whether or not in such an event she loses her right to support during his lifetime (Ketuboth 54b; Rabenu Asher and Rambam)."

16. "If a widow releases the heirs from the payment of the amount mentioned in the contract of marriage she likewise loses thereby her right to support from her husband's estate (Beth Joseph)."

17. "The foregoing rules of law refer only to a case where she has released her husband or the heirs from the entire amount mentioned in the contract of marriage, but if she has left some amount to herself unreleased, she is entitled to support (Ketuboth 97b)."

8. "Even if the husband at the time of his death has said that his widow shall not be supported out of his estate, such provision has no effect, and the heirs cannot force her to accept the amount mentioned in her contract of marriage in order for it to be found to support her. The heirs are bound to support the widow as long as she makes no demand on the contract of marriage."

9. "Where a man dies leaving a widow and a daughter surviving, either from her or from a former wife, and the estate is not sufficient to support both, the widow is entitled to preference, and the daughter must, if necessary, seek charity (John Watts 140)."

10. "It is held by other authorities, however, that the estate, whether large or small, is to go to the support of both equally until the estate is exhausted."

11. "It, however, the daughter marries and the estate has gone to her husband, it is the duty of the husband to support the widow (Orr)."

12. "It, however, at the time of the marriage the husband made an agreement with his wife that she must receive no support from his estate during her widowhood, or if it is the custom of the locality that a widow is not entitled to support, the heirs are not compelled to support her (Hammond)."

13. "The Court may rule that the widow is not entitled to support from the estate."

14. "If a widow demands the sum provided for her in the marriage contract by legal action, she is not entitled to support (Kimbrough)."

15. "But if she makes a demand without going to Court, she does not thereby lose her right to support (Orr)."

16. "There is an opinion, however, that a woman does not lose her right to support by demanding her rights under the contract of marriage through Court, if she was forced to do it, as when the heirs refuse to support her, or when the heirs decline to by making false representation to her to the effect that a certain one is willing to marry her, and as a result thereof she demanded her rights under the marriage contract, or the like (L. c.)."

17. "If marriage proposals are made to a widow and she accepts such proposals, she does not thereby lose her right to support (L. c.)."

18. "If a widow is engaged to be married, she loses her rights of support."

19. "If a woman refuses her husband from the payment of her of the amount mentioned in her contract of marriage, and thereby loses her right to support during her widowhood. It is disputed whether or not in such an event she loses her right to support during his lifetime (Kimbrough, Orr, Adair and Burden)."

20. "If a widow releases the heirs from the payment of the amount mentioned in the contract of marriage she likewise loses thereby her right to support from her husband's estate (Dodd Records)."

21. "The foregoing rules of law refer only to a case where she has released her husband or the heirs from the entire amount mentioned in the contract of marriage, but if she has left some amount to herself, she is entitled to support (Kimbrough 168)."

18. "In such an event, however, the heirs have a right to pay the amount left by her unreleased. and thereby not be bound to support her (Rabenu Asher)."

19. "If a woman gives a release either to her husband or to the heirs, or sells her rights, without specifying the sum of money for which she sells or for which she releases her rights, it is construed in law that she has thereby released or sold the entire amount mentioned in her contract of marriage (Maimonides)."

20. "If the estate left by her husband is valued, say, at one thousand dollars, and the amount the widow is entitled to obtain under her contract of marriage is, say, four hundred dollars, she has a right to demand that six hundred dollars be expended on her support, and when that sum has been expended, she has a right to demand that the balance of four hundred dollars be given to her in accordance with her rights under the marriage contract (L. c.)."

21. "If a widow who is poor has not demanded her support for a period of two years, and if a widow who is rich has not demanded her support for three years, it is construed in law as a release, and therefore they lose their right of support for the years past (Ketuboth 97a)."

22. "If the widow has waited even one day less than the period mentioned in the foregoing rule of law, or if she had a pledge in her possession to secure her support, or if she has borrowed for her support in the meantime, it is not considered as a release of her right to support (Tur)."

23. "If a widow demands support from the heirs, and they claim that they have given it to her, and she claims that she has not received it, if this controversy takes place while the widow is yet unmarried, the burden of proof is upon the heirs to prove their contention. They must, therefore, produce evidence to prove that they have given her support as contended by them. If they fail to do so, the widow takes a rabbinical oath to the effect that she has not yet received her support, and is entitled to a recovery. If, however, this controversy takes place when she is married to someone else, the burden of proof lies upon her, and she must come forward with evidence to prove that she has not received it. If she fails to do so, the heirs take an oath to the effect that they have paid her, and they are absolved from liability (Maimonides)."

24. "If a man and his wife go beyond the seas and the woman returns therefrom saying that her husband has died there, her statement is accepted as true. She, therefore, has a choice: She may either demand support from her husband's estate, or she may demand the payment of the amount of money mentioned in the contract of marriage. If, however, she says that her husband has divorced her, her statement is not accepted as true, and she is entitled to be supported only to a sum not exceeding the amount mentioned in the contract of marriage (Ketuboth 117b)."

25. "A widow is to be supported only out of the real property which is free from encumbrance, but not out of realty which is either mortgaged or otherwise encumbered (Gittin 48b)."

26. "If the husband has sold or given away his real property during his lifetime, or even if the heirs have sold, pledged, or given away such realty, the property is not taken out of the possession of the vendee or the donee in order to support the widow (Ketuboth 89a)."

27. "This, however, is only true when the husband has given the property when in sound health, but if he has given it away when stricken with illness, she is entitled to receive her support from such property, if there is no other property left which is not encumbered (Baba Bathra 133a)."

18. "In such an event, however, the heirs have a right to pay the amount left by her unreleased, and thereby not be bound to support her (Bacon Abridgement)."

19. "If a woman gives a release either to her husband or to the heirs, or sells her rights, without specifying the sum of money for which she sells or for which she releases her rights, it is construed in law that she has thereby released or sold the option against mentioned in her contract of marriage (Matrimonial)."

20. "If the estate left by her husband is valued, say, at one thousand dollars, and the amount the widow is entitled to obtain under her contract of marriage is, say, four hundred dollars, she has a right to demand that six hundred dollars be expended on her support, and when that has been expended, she has a right to demand that the balance of four hundred dollars be given to her in accordance with her rights under the marriage contract (L. c.)."

21. "If a widow who is poor has not demanded her support for a period of two years, and if a widow who is rich has not demanded her support for three years, it is construed in law as a release, and they lose their right of support for the years past (Kentucky Appl.)."

22. "If the widow has waited even one day less than the period mentioned in the foregoing rule of law, or if she has a pledge in her possession to secure her support, or if she has borrowed for her support in the meantime, it is not considered as a release of her right to support (Ibr)."

23. "If a widow demands support from the heirs, and they claim that they have given it to her, and she claims that she has not received it, if this contract is taken place while the widow is not married, the burden of proof is upon the heirs to prove their contention. They must, therefore, produce evidence to prove that they have given her support as contended by them. If they fail to do so, the widow takes a rebuttal cast to the effect that she has not yet received her support, and is entitled to a recovery. If, however, this controversy takes place when she is married with evidence to prove that she has received it. If she fails to do so, the heirs take an oath to the effect that they have paid her, and they are absolved from liability (Matoundon)."

24. "If a man and his wife go beyond the seas and the woman returns therefore saying that her husband has died there, her statement is accepted as true. She, therefore, has a contract. She may either demand support from her husband's estate, or she may demand the payment of the amount of money mentioned in the contract of marriage. If, however, she says that her husband, his statement, her statement is not accepted as true, and she is entitled to be supported only to a man not exceeding the amount mentioned in the contract of marriage (Ketuba [illegible])."

25. "A widow is to be supported only out of the real property which is free from encumbrance, but not out of realty which is either mortgaged or otherwise encumbered (Ditzik 48b)."

26. "If the husband has sold or given away his real property during his lifetime, or even if the heirs have sold, pledged, or given away such realty, the property is not taken out of the possession of the vendee or donee in order to support the widow (Kerebath 88a)."

27. "While, however, in only true when the husband has given the property when in sound health, but if he has given it away when stricken with illness, she is entitled to receive her support from such property, if there is no other property left which is not encumbered (Baba Bathra 133a)."

28. "The widow is not entitled to receive support out of personal property, even when such is free from all encumbrance (Ketuboth 69b)."

29. "If, however, she seizes personal property left by her husband, even if such seizure takes place after his death, the heirs cannot recover the same (Ketuboth 96a)."

30. "Now, since the Goanim have enacted that a widow may collect the amount provided for her in the marriage contract out of her husband's personal property, a widow is entitled to be supported out of such property, even when she does not seize the same (Maimonides)."

31. "If the husband has made a gift of the personal property, the widow cannot recover said property for the purpose of obtaining support therefrom."

32. "If the widow fail to seize the personal property left by her husband, the heirs may take such property into their possession and pay for her support. She cannot prevent such taking possession and insist that the Court take possession thereof for fear that it may be lost while in their custody and thus lose her means of support. Even in the event that husband has expressly stated that she shall receive her support out of the personalty in question, she cannot prevent the heirs taking possession thereof (L. c.)."

33. "In that event, the widow may, however, prevent the heirs from selling the real property left by her husband; but if the property has already been sold, the sale is valid (L. c.)."

34. "If a man leaves several wives (referring to the time when polygamy was permitted), there is no priority, and all are equally entitled to support."

35. "If a widow sell real property for her support, she cannot thereafter claim the amount to which she was entitled in her contract of marriage from the property she sold (Ketuboth 97a)."

36. "When a certain sum of money is given a widow or any other woman entitled to support, it must not be less than a sum sufficient for her support at least for thirty days, in order that she may not be embarrassed and disgraced by having to come to demand her support from Court every day (L. c.)."

## CHAPTER XCIV.

## A WIDOW'S RIGHT TO A DWELLING AND WEARING APPAREL.

1. "Just as a widow is entitled to support out of the estate belonging to her husband, thus is she entitled to a dwelling, wearing apparel and all other necessaries, or she may live in the same house in which she has lived during the lifetime of her husband (Ketuboth 103a)."

2. "The heirs must furnish a separate dwelling, according to her station in life, and they cannot compel her to reside with them (Rabbi Moses Iserlish)."

3. "However she is not permitted to rent the premises to another. A sale of her dwelling by the heirs is invalid."

3a. "There is an opinion that the heirs may hire for her a dwelling other than the one she lived in during her husband's lifetime (L. c.)."

academicus publishing company, inc.

4. "A widow is entitled to as many servants and other luxuries as the husband provided for her whenever he goes away on any long journey (Ketuboth 103a)."

5. "If the dwelling collapses, the heirs are not bound to rebuild it."

6. "Even the widow is not permitted to expend her own money in rebuilding the house. She has lost her right to the dwelling, and cannot regain it, even if the heirs rebuild it. If the house is only slightly damaged the widow is not permitted to repair the house, but she must inhabit it in its damaged condition or remove. The heirs must hire for her a dwelling (L. c.)."

7. "If a widow says to the heirs that she wants to live with her own parents and not with them, and demands that a sum of money be fixed by them for her support, the heirs may say to her: "If you are willing to live together with us, we are ready to support you, but if you insist on living with your parents, we will give only as much as it would cost us if you had stayed with us" (L. c.)."

8. "If the widow be a young woman and any of the heirs are adult males, who are not her children, she may decline to reside together with them for moral reasons."

9. "The heirs are bound to pay the personal and all other taxes her husband was accustomed to pay for her (Tur)."

10. "They are not compelled to provide bail or ransom for her, nor medical treatment, when the cost of such treatment is a fixed price; nor are they bound to provide her with a grave or other burial expenses (L. c.)."

## CHAPTER XCV.

## THE EARNINGS OF A WIDOW; HER RIGHT TO ADVANCEMENT OF PROPERTY.

1. "Since the heirs are bound by law to support a widow, they are entitled to obtain from her all her earnings (Ketuboth 95b)."

2. "If the heirs say to her: 'Keep your earnings for yourself and we will not support you,' they are not listened to (Maimonides)."

3. "The widow may, however, say to the heirs: 'I do not want to be supproted by you and I will keep my earnings for myself.' If she was nursing a child, she may demand compensation from them (Yerushalmi Ketuboth)."

4. "All services a woman is bound to render to her husband a widow is bound to render to the heirs, except filling up the cup, making the bed ready and washing the face, hands and feet (Ketuboth 96a)."

5. "Whatever a widow finds and the products of her real property belong to her. If she saved of her earnings or from the food or from the cloth, it belongs to the heirs (L. c.)."

## CHAPTER XCVI.

## OATH OF A DIVORCEE AND A WIDOW.

1. "A widow cannot collect any part of the sum mentioned in the contract of marriage without taking the oath prescribed by law (Ketuboth 95b)."

gorgias publishing company, inc.

## CHAPTER XCV.

### THE EARNINGS OF A WIDOW; HER RIGHT TO ADVANCE-MENT OF PROPERTY.

1. "Since the heirs are bound by law to support a widow, they are entitled to obtain from her all her earnings (Ketuboth 39b)."

2. "If the heirs say to her, 'Keep your earnings for yourself and we will not support you,' they are relieved to (maintenance)."

3. "The widow may, however, say to the heirs, 'I do not want to be supported by you and I will keep my earnings for myself.' If she was nursing a child, she may demand compensation from them (Yerushalmi Ketuboth)."

4. "All services a woman is bound to render to her husband a widow is bound to render to the heirs, except filling up the cup, making the bed ready and washing the face, hands and feet (Ketuboth 96a)."

5. "Whatever a widow finds and the produce of her real property belongs to her. If she saved of her earnings or from the food or from the cloth, it belongs to the heirs (L. c.)."

## CHAPTER XCVI.

### CASE OF A DIVORCEE AND A WIDOW.

1. "A widow cannot collect any part of the sum mentioned in the contract of marriage without suing the oath prescribed by law (Ketuboth 82b)."

2. "The property which she has brought upon her marriage whether guaranteed by the husband or not, and the property set aside by the husband and specifically mentioned in the contract of marriage, she may recover without an oath, provided that such property is still intact or there exists something which directly came from such property (Ketuboth 55a)."

3. "If a widow dies before the taking of the prescribed oath, her heirs are not entitled to the sum mentioned in the contract of marriage, because no heirs can inherit a thing or property which can be collected only by taking an oath (Shebuoth 48a)."

4. "A widow must take an oath to the effect that her husband has not given money to her, and she has seized nothing belonging to him (Tur)."

5. "There is also an opinion that she must swear that she has not sold her rights of the contract to her husband and that she has not released him from liability (Maimonides)."

6. "If the woman claims that she was married when she was a maiden and consequently she is entitled to two hundred zuz, and the husband or the heirs claim that she was married when a widow, and therefore she is entitled to only one hundred zuz, and the marriage contract was lost, if there are witnesses who can testify that the husband has made the wedding as is customary in the case of maidens, she is entitled to get two hundred zuz. If there are no such witnesses, she is entitled to only one hundred zuz, but the husband or the heirs must take an oath to corroborate his contention."

7. "A man dies leaving four women, A, B, C and D (referring to the time when polygamy was permitted), all of whom are entitled to certain sums of money in their contracts of marriage, A was entitled to one hundred zuz, B to two hundred, C to three hundred and D to four hundred, and all signed in one day. The estate was not sufficient for all, for instance, the estate is only five hundred dollars. Divide the amount of five hundred dollars in ten parts, each part being fifty dollars. A is entitled to one part, B to two parts, C to three parts and D to four parts, the total being $500. Other Sages hold that each of the four women should receive one hundred dollars and the remaining one hundred dollars should be divided equally between the last three. And if the estate is only $300, then each of the four must get an equal share, etc."

## CHAPTER XCVIII.

### WHEN A WOMAN IS RELEASED FROM TAKING OATH.

1. "If a husband during his lifetime releases his wife from taking an oath, she may collect the amount mentioned in the contract of marriage without taking the prescribed oath. Such release, however, does not have any effect in so far as the woman's heirs are concerned. If, therefore, the woman's heirs seek to collect the amount of the marriage contract, the husband or his heirs may impose an oath upon them (Ketuboth 86b)."

2. "The husband may likewise release his wife's heirs from taking the oath prescribed by law (L. c.)."

academicus publishing company inc

2. "The property which she may bring upon her marriage whether guaranteed by the husband or not, and the property set aside by the husband and specifically mentioned in the contract of marriage, she may recover without delay, provided that such property is still intact or there exists something which directly owns from such property (Rotshots 65a)."

3. "If a widow dies before the taking of the prescribed oath, but before are cut entitled to the sum mentioned in the contract of marriage, because no heirs can [illegible] which can be collected only by taking an oath (Shabuoth 48a)."

4. "A widow must take an oath to the effect that her husband has not given away to her, and she has actual notice belonging to him (Ibn)."

5. "There is also a opinion that she must swear that she has not voids her rights to the contract to her husband nor that he has released him from liability (Mekoneidas)."

6. "If the woman claims that she was married when she was a maiden and consequently she is entitled to two hundred mn, and the husband or the heirs claim that she was married when a widow, and therefore she is entitled to only one hundred mn, and the marriage contract has lost, if there are witnesses who can testify that the husband has made the wedding as in customary in the case of maidens, she is entitled to two hundred mn. If there are no such witnesses, she is entitled to only one hundred mn, but the husband or the heirs must take an oath to corroborate her contention."

7. "A man dies leaving four women, A, B, C and D (referring to [illegible] already was permitted), all of whom are entitled to certain sums of money in their contracts of marriage. A one entitled to one hundred mn, B to one hundred, C to three hundred and D to four hundred, and all stayed in one day. The estate was not sufficient for all, for instance, the estate is only five hundred dollars. Divide the amount of five hundred dollars in ten parts, each part being fifty dollars. A is entitled to one part, B to two parts, C to three parts and D to four parts, the total being 5000. Other Sages hold that each of the four women should receive one hundred dollars and the remaining one hundred dollars should be divided equally between the last three. And if the estate is only 5000, then each of the four must get an equal share, etc."

## CHAPTER XCVIII.

### WHEN A WOMAN IS RELEASED FROM TAKING OATH.

1. "If a Husband during his lifetime releases his wife from taking an oath, she may collect the amount mentioned in the contract of marriage without taking the prescribed oath. Such release, however, does not have any effect in so far as the woman's heirs are concerned. If, therefore, the woman's heirs seek to collect the amount of the marriage contract, the husband or his heirs may impose an oath upon them (Rotshoh 86b)."

2. "The husband may likewise release his wife's heirs from taking the oath prescribed by law (L. c.)."

## CHAPTER XCIX.

### A WIDOW'S WEARING APPAREL.

1. "If a widow seeks to collect the amount of the contract of marriage, all her wearing apparel is to be valued and deducted from such amount, and it is immaterial whether such apparel is worn by her on week days or on the Sabbath (Ketuboth 54)."

2. "If a divorcee, who was divorced by her husband without justification (referring to the time when divorce was permitted by force), seeks to recover the amount mentioned in the contract of marriage, the apparel worn by her on week days is not to be valued for the purpose of deducting their value, but the apparel worn by her on festivals or on the Sabbath are to be valued (Maimonides)."

3. "In the last named event, she cannot be compelled to give her apparel and receive their value instead, but she has the right to retain it for the amount at which it was valued (Beth Joseph)."

4. "If one makes a gift to his wife, such gift belongs to her even if he thereafter divorce her or she becomes a widow (Tur)."

## CHAPTER C.

### WHEN MARRIAGE CONTRACT IS COLLECTIBLE.

1. "Nowadays, since a provision to that effect is embodied in the contract of marriage, the amount mentioned therein may be collected even from the apparel worn by the husband."

## CHAPTER CI.

### HOW LONG THE CONTRACT IS COLLECTIBLE.

1. "A widow who is in possession of her contract of marriage can collect the same for life, whether she receives her support at her husband's house or not, even after she marries (Ketuboth 104a)."

2. "If the marriage contract is not in her hand and she comes to collect without the contract, then it is customary to pay the widow's money without writing. She is entitled to collect only until 25 years, not more. If she is silent longer than that time, she loses the right to collect."

3. "If she claims the money within the 25 years, and after that she was again silent, the time is reckoned 25 years from the time of the claim."

4. "If a widow receives her support from the heirs of her husband, they deliver it at her father's house, and she is silent for her money of the contract of marriage, she does not lose her right. She may be silent out of respect for the heirs."

5. "A divorcee even after 25 years can collect the contract of marriage."

## CHAPTER CII.

### THE COLLECTION OF A DEBT AND MARRIAGE CONTRACT.

1. "A man dies leaving a widow and a creditor, and leaves realty sufficient only to pay either the widow or the creditor. If the marriage

academicus publishing company, inc.

CHAPTER XCIX.

A WIDOW'S TRADING ADVANCE.

1. "If a widow agrees to collect the assets of the partner of her trade, all her wedding apparel is to be valued and deducted from such assets, and it is immaterial whether such apparel is worn by her on week days or on the Sabbath (Levinsohn Sol)."

2. "If a divorcee, who was divorced by her husband without justification (referred to the time when divorce was permitted by force), seeks to recover the amount mentioned in the contract of marriage, the apparel worn by her on week days is not to be valued for the purpose of deducting their value, but the apparel worn by her on festivals or on the Sabbath are to be valued (Montefiori)."

3. "In the last named event, she cannot be compelled to give her apparel and trousseau their value instead, but she has the right to retain it for the amount at which it was valued (Beth Joseph)."

4. "If one spouse resides in his city, such city follows to her even if he thereafter divorce her or she become a widow (Ibn)."

CHAPTER C.

WHEN MARRIAGE CONTRACT IS COLLECTIBLE.

1. "Nowadays, since a provision to that effect is inserted in the contract of marriage, the amount mentioned therein may be collected even from the apparel worn by the husband."

CHAPTER CI.

NOT LONG THE CONTRACT IS COLLECTIBLE.

1. "A widow who in the possession of her contract of marriage can collect the same for life, whether she receives her support at her husband's house or not, even after she marries (Rabbenu Ibn)."

2. "If the marriage CONTRACT is not in her hand and she comes to collect without the contract, then it is customary to pay the widow's money without writing. She is entitled to collect only until 25 years, not more, if she is silent longer than that time, she loses the right to collect."

3. "If she ~~[illegible]~~ claims the money within ten 25 years, and after that she was dumb silent, the time is reckoned 25 years from the time she claims."

4. "If a widow receives her support from the heirs of her husband, they deliver it at her father's house, and she is silent for her money of the contract of marriage, she does not lose her right. She may be silent out of respect for the heirs."

5. "A divorcee even after 25 years can collect the contract of marriage."

CHAPTER CII.

THE COLLECTION OF A DEBT AND MARRIAGE CONTRACT.

1. "A act that levies a widow and a creditor, one leaves reality writings only to pay either the widow or the creditor. If the marriage

contract was executed prior to the contracting of the debt the widow has priority. If the debt was contracted before the execution of the marriage contract, the creditor has priority. Even if the latter seized it, it can be taken from him."

2. "This law of priority does not apply to personal property (Ketuboth 93b)."

## CHAPTER CIII.

## THE RIGHT OF A WIDOW TO SELL PROPERTY.

1. "A widow may sell her husband's property for the purpose of collecting the amount mentioned in the contract of marriage without the presence of the Court and without the necessary proclamation generally required in the case property is sold to satisfy debts. Such sale must, however, take place, in the presence of three men who are known to be trustworthy and can qualify as experts in the valuation of real property (Ketuboth 97a)."

2. "The heirs are become personal guarantors of the sale made for the purpose of collecting the contract of marriage, no matter whether such sale was made by the widow herself or through the Court."

3. "A divorced woman cannot sell her husband's property herself, but she must do so in the presence of a competent court of justice. Even a widow who has again married is not permitted to sell property for the satisfaction of her widowhood, unless in the presence of a competent court of law (Ketuboth 96b)."

4. "If the marriage contract of the widow amounted to $200 and she sold real property valued at $100 and received $200, or if the property was valued at $200 and she received $100, she cannot demand more from the heirs."

5. "If the widow has a marriage contract for 100 zuz and she sells real property for 101 zuz, even if she wants to make good the 1 zuz to the heirs from her pocket, the deal is void."

6. "If the widow has a marriage contract for 400 zuz and she sold real property to one man for 100 zuz and to another for 100 zuz, and to the third for 100 zuz, and to the fourth for 101 zuz, the deal with the fourth is void. The other three are valid."

## CHAPTER CV.

## SELLING OR RELEASING CONTRACT OF MARRIAGE.

1. "A woman may sell or give away her contract of marriage or any part thereof, and the buyer or the donee is entitled to the same rights as the woman. If the woman becomes a widow or a divorcee, the buyer or the donee is entitled to the amount mentioned in the contract of marriage, and if she dies during the lifetime of her husband, they are not entitled to anything (Ketuboth 97a)."

2. "If a woman releases the husband from the amount mentioned in the contract of marriage, it is valid without any symbolic agreement and without any witnesses, providing it is certain that it was done in sincerity and not jocularly only (Maimonides)."

3. "If the woman is forced to release the contract of marriage, as when her husband has constantly been quarreling with her, and she gives a release in order that he might live in peace with her, such release is invalid, although she makes no protest at the time of the release (Rashba)."

4. "A sells a promissory note to B, which he holds from C. If A thereafter releases C from liability, such release is valid. Even if the heirs of A release C, the release is valid. Therefore, if a woman sells her contract of marriage to someone else and thereafter her husband dies and then she dies, her son can release the heirs from liability and thus make the sale void. This rule of law holds true, even in case the son is the only heir left by her, and consequently he can release himself from liability in order to make the sale void and not have to pay the amount mentioned in the contract of marriage (Ketuboth 85a)."

5. "A man sells his mother's marriage contract during the lifetime of his father with a provision that if his father should die first and then his mother, the buyer should receive the sum of money mentioned in the contract of marriage. If he imposed a condition on the sale to the effect that if his mother should object to the sale, then the sale should be declared null and void; and if his mother has died without having made any objection, he cannot then say that he is substituted in his mother's stead, and thereafter he may in her stead object, because such objection was not guaranteed by himself (Ketuboth 91b)."

## CHAPTER CVI.

### ONE BEQUEATHING HIS PROPERTY TO HIS CHILDREN.

1. "If a man transfers his property to his children, whether male or female, no matter in what state of health the man is, and conveys to his wife some realty of any nature, the wife loses her right to the amount mentioned in the contract of marriage, if she kept silent and made no protest at the time the facts were disclosed to her of this property, and if he bought property afterward, she can collect from it (Peah III, 7)."

## CHAPTER CVII.

### ONE TRANSFERRING ALL HIS PROPERTY TO HIS WIFE.

1. "If a man transfers all his property to his wife, no matter in what state of health he is, although a symbolic agreement has been made by him to that effect, she is only considered as a mere trustee or guardian of his heirs. This rule of law applies to a case where his heirs consist of children born to him by the present wife, or of heirs born to him by his former wife, or even of his brothers, or any other legal heirs. If, however, he leaves to his heirs real or personal property of any value whatsoever, she acquires title to all the property thus conveyed to her and she does not lose her right of the marriage contract (Baba Bathra 131b)."

2. "In that event, if it was written all his estate to a divorced wife, she is entitled to it."

3. "If a man says, 'My first daughter shall take $50 and my second daughter $50, ' and the visitors ask him, 'What will you do for your wife,' he says, 'The balance belongs to her.' That is effective, because he has already given something to his children."

4. "A woman who acquires all the property of her husband as an absolute gift thereby loses her right to the amount mentioned in the contract of marriage. If, therefore, a creditor produces a promissory note which fell due prior to such transfer, and all her husband's property was taken by the creditor to satisfy such debt, she is not entitled to anything whatsoever (L. c. 132b)."

## CHAPTER CVIII.

### THE BEQUEST OF A SICK PERSON THAT HIS WIFE SHOULD GET AS HER SHARE AS MUCH AS ONE OF HIS CHILDREN.

1. "If a sick person says that his wife shall take a share out of his estate equal to the share taken by any of his children, she is entitled to share with them in addition to the amount she is to get according to her marriage contract (Baba Bathra 128a)."

2. "If, in such event, children were born to him after the will was made, such children are to be included in the bequest, and the wife is to get a share equal to that of any of the children (L. c.(."

3. "For instance, if he had three children at the time the will was made and thereafter two more children were born to him, the wife takes a share equal to that of any of the five children, which is one-sixth of the estate (Baba Bathra 128b)."

4. "In the foregoing event she is entitled to a share of the property her husband was possessed of at the time the will was made, but if her husband had acquired property after the will was made, she is not entitled to any share therefrom, as no man can convey property which was not as yet in his possession (L. c.)."

5. "If it is doubtful whether the property in question was owned by her husband at the time the will was made, the wife must produce evidence to prove that he was then possessed thereof, otherwise she does not get any share therefrom (Tur)."

6. "If all the children have died, she is entitled to a share of the estate as any of the children would have been entitled to in case they had survived their father, and the balance goes to his heirs."

7. "If, after this will was made, the number of children is diminished, she takes her share according to the number living when the father died. Other Sages are in doubt as to this law."

## CHAPTER CIX.

### A SICK PERSON BEQUEATHING MONEY TO HIS WIFE.

1. "If a sick person says: 'Give two hundred zuz to my wife, which is due her,' she is entitled to the sum of two hundred zuz in addition to the sum mentioned in the contract of marriage. If, however, the sick person has said: 'Give two hundred zuz to my wife for her rights under her contract of marriage," she is not entitled to both sums (i.e., to the two hundred zuz and likewise to the sum provided for her in her contract of marriage), but the wife has a right to choose; if the two hundred zuz exceed the sum mentioned in her marriage contract, she can take the former, and if the latter exceed that of the former she takes the latter (Baba Bathra 138a)."

2. "It is disputed whether the woman is entitled to the right of choice as mentioned in the foregoing rule of law in the event that her husband bequeathed for her a certain sum of money, without specifying for what the money is to be given to her. Some authorities hold that she may exercise such of election, while others are of the opinion that such sum is to be considered as a gift, and, therefore, she is entitled to such sum without her rights to the contract of marriage being impaired (Tur.)"

publishing company inc.

## CHAPTER CXIII.

### THE REQUEST OF A SICK PERSON THAT HIS WIFE SHOULD GIVE UP HER SHARE AS MUCH AS ONE OF HIS CHILDREN.

1. "If a sick person says that his wife shall take a share out of his estate equal to the share taken by any of his children, she is entitled to share with them in addition to the amount she is to get according to her marriage contract (Beda Hatira 1288)."

2. "If, in such event, children were born to him after the will was made, such children are to be included in the bequest, and the wife is to get a share equal to that of any one of the children (L. c.)."

3. "For instance, if he had three children at the time the will was made and thereafter two more children were born to him, the wife takes a share equal to that of any of the five children, which is one-sixth of the estate (Beda Hatira 1288)."

4. "In the foregoing event she is entitled to a share of the property her husband was possessed of at the time the will was made, but if her husband had acquired property after the will was made, she is not entitled to any share therefrom, as the man owns property which was not in his possession (L. c.)."

5. "If it is doubtful whether the property in question was owned by her husband at the time the will was made, the wife must produce evidence to prove that he was then possessed thereof, otherwise she does not get any share therefrom (Ibn)."

6. "If all the children have died, she is entitled to a share of the estate as any of the children would have been entitled to in case they had survived their father, and the balance goes to his heirs."

7. "If, after this will was made, the number of children is diminished, she takes her share according to the number living when the father died. Other Sages are in doubt as to this law."

## CHAPTER CXIX.

### A SICK PERSON REQUESTING MONEY TO HIS WIFE.

1. "If a sick person says: 'Give two hundred rus to my wife, which is due her,' she is entitled to the sum of two hundred rus in addition to the sum mentioned in the contract of marriage. If, however, the sick person has said: 'Give two hundred rus to my wife for her rights under her contract of marriage,' she is not entitled to both sums (i.e., to the two hundred rus and likewise to the sum provided for her in her contract of marriage), but the wife has a right to choose; if the two hundred rus exceed the sum mentioned in her marriage contract, she can take the former, and if the latter exceed that of the former she takes the latter (Beda Hatira 1288)."

2. "It is disputed whether the woman is entitled to the right of choice as mentioned in the foregoing rule of law in the event that her husband bequeathed for her a certain sum of money, without specifying for what the money is to be given to her. Some authorities hold that she may exercise such of election; while others are of the opinion that such sum is to be considered as a gift, and, therefore, she is entitled to such sum without her rights to the contract of marriage being impaired (Ibn.)."

3. "If in the last named event he expressly said that such sum of money is to be a gift to her, all agree that she is entitled to it in addition to her marriage contract (Rivosh)."

4. "If a sick person says that his wife shall keep her clothes, she is entitled to keep all her clothes, whether she wears them on week days or on the Sabbath (Tur)."

5. "If a man says that his wife shall keep all her wearing apparel, she is likewise entitled to her shawls, etc., for everything which a woman wears, or wraps herself, in is included in the term wearing apparel (L. c.)."

## CHAPTER CX.

## LAWS CONCERNING THE RELEASE OF A WOMAN.

1. "It is permitted to write a release for a woman even when her husband is not present, providing, however, the woman is identified by the one who is to execute such release. The husband is bound to pay for the execution of such release (Baba Bathra 166a)."

2. "If one finds a release executed by a woman to the effect that her marriage contract was paid by her husband, if the woman admits that she has given such release to her husband, it must be restored to the husband. If, however, she claims that she has never given it to her husband and that she herself has lost it, such release is turned over neither to the woman nor to her husband, and she can collect on the marriage contract (Baba Meziah 19a)."

## CHAPTER CXI.

## LAWS CONCERNING MARRIAGE CONTRACT PROVIDING FOR MALE CHILDREN.

1. "If it is provided in the contract of marriage that the wife's male children shall inherit her rights, then such male children inherit from their mother the sum provided for her in the contract of marriage, and also the dowry which she has brought upon her marriage and which was guaranteed by him. The balance of his estate is to be divided equally among all the heirs; e.g., A marries a woman B, whose marriage contract and the dowry amount to the sum of one thousand zuz. B gives birth to a son C, and B dies during his lifetime. Thereafter A marries D and she gives birth to a son E. D's contract of marriage and dowry amount to the sum of two hundred zuz. Thereupon D dies during A's lifetime, and thereafter A dies leaving the sum of two thousand zuz. In such event C is entitled to the one thousand zuz mentioned in his mother's contract of marriage, and E is entitled to the two hundred zuz mentioned in his mother's contract of marriage, and the balance of the estate is divided equally between C and E. As a result C's total inheritance amounts to one thousand four hundred zuz, and E's inheritance amounts to six hundred zuz (Ketuboth 52b)."

2. "A provision in a marriage contract to the effect that the male children of a woman shall inherit her is valid and effective only when, after the division of the inheritance as provided, there will be a residue of the estate at least amounting to one denari, which will be equally divided among such heirs. If there is no residue of the estate amounting to the value of one denari, the provision in the marriage contract is void, and the heirs inherit equally from their father's estate. For, should the provision in such case take effect it would tend to nullify the law laid down in the Torah to the effect that heirs are entitled to equal shares of their father's inheritance (L. c.)."

Lawbook publishing company, inc.

CHAPTER CX.

LAWS CONCERNING THE RELEASE OF A WOMAN.

1. "If [illegible] permitted to write a release for a woman even when her husband is not present, provided, however, the woman is identified by the one who is to execute such release. The husband is bound to pay for the execution of such release (Beth Mishta 100a)."

2. "If one finds a release executed by a woman or the effect that her marriage contract has been paid by her husband, if the woman admits that she has given such release to her husband, it must be restored to the husband. If, however, she claims that she has never given it to her husband and that she herself has lost it, such release is turned over neither to the woman nor to her children, but she can collect on the marriage contract (Beth Meziah 19a)."

CHAPTER CXI.

LAWS CONCERNING MARRIAGE CONTRACT PROVISIONS

FOR MALE CHILDREN.

1. "It is provided in the contract of marriage that the wife's male children shall inherit her rights, then such male children inherit from their mother the sum provided for her in the contract of marriage, and also the dowry which she has brought upon her marriage and which was guaranteed by him. The balance of his estate is to be divided equally among all the heirs (i.e., a marries a woman B, whose marriage contract and the dowry amounts to the sum of one thousand two [illegible] A gives birth to a son C, and B dies during his lifetime. Thereafter A marries D and she gives birth to a son X. D's contract of marriage and dowry amounts to the sum of two hundred zuz. Thereupon B dies leaving A's lifetime, and thereafter A dies leaving the sum of two thousand zuz. In such event C is entitled to the one thousand zuz mentioned in his mother's contract of marriage, and X is entitled to the two hundred zuz mentioned in his mother's contract of marriage, and the balance of the estate is divided equally between C and X. As a result C's total inheritance amounts to six hundred zuz (Yerushalmi Yeb)."

2. "A provision in a marriage contract to the effect that the male children of a woman shall inherit her is valid and effective only when, after the division of the inheritance as provided, there will be a residue of the estate at least sufficient to one dowry, which will be equally divided among such heirs. If there is no residue of the estate sufficient to the value of one dowry, the provision in the marriage contract is void, and the heirs inherit equally from their father's estate. For, should the provision in such case take effect it would tend to nullify the institution by the Torah to the effect that heirs are entitled to equal shares of their father's inheritance (B. B.)."

3. "The residue as required above must be in existence and not in expectancy. If, at the time of the father's death there was no such residue, but there was an expectancy to inherit an estate in the future from their grandfather, it is not in law considered as a residue. Even in the event their grandfather has died before the inheritance was distributed, it is of no effect, as long as there was no residue to the amount of one denari at the time of his death (Ketuboth 52b)."

## CHAPTER CXII.

## LAWS CONCERNING THE SUPPORT OF FEMALE CHILDREN OUT OF DECEDENT'S ESTATE.

1. "Pursuant to the provision embodied in the contract of marriage, female children are entitled to be supported out of their father's estate, after his death, until they either become betrothed or until they become of age (twelve years and one day) (L. c.)."

2. "When the female child is supported out of the estate of her father, who has died, whatever she earns and whatever she finds belongs to her and not to the estate (Ketuboth 43a)."

3. "If a female minor child, who is entitled to be supported out of her father's estate, is married and thereafter becomes a widow or is divorced while still in her minority, she is entitled to such support until she becomes of age or until she is again betrothed (Ketuboth 43b)."

3a. "Other opinoins hold that she loses the support (Ramo)."

4. "As in the case of a widow, a daughter is entitled to food, wearing apparel and a residence to be provided for her out of the estate belonging to her father (Maimonides and Yerushalmi)."

6. "As has been stated, the manner of support in the case of a widow is to be determined by the widow's station in life as well as by that of her husband's. In the case of a female child, however, her station of life is not taken into consideration at all, but she is provided with necessaries only (Yerushalmi)."

8. "Female children cannot be supported from sold property, even if a form of agreement was made at the time of writing the marriage contract. Even if the female was born at the time of agreement, for instance, he divorced his wife and she have female children at that time and afterward he re-marry his wife again."

9. "Other Sages hold that if a form of agreement was made after the marriage, for the support of the females, it is valid."

10. " If a man agrees with his wife that his female children shall be supported out of his estate, even after they have become of age, such children are entitled to support even from property which is encumbered (Tur)."

12. "If, however, at the time of his marriage he made an oral agreement with his wife that their female children shall not be entitled to support out of his property the agreement is valid. For it is well established that in pecuniary matters a man may make conditions in a contract which are contrary to law (Tur)."

13. "If a man dies leaving sons and daughters, the sons are entitled to inherit all the property and they must support their sisters out of the estate until they become of age or until they are betrothed (Baba Bathra 139a)."

CHAPTER XXII.

LAWS CONCERNING THE SUPPORT OF FEMALE CHILDREN

OUT OF THEMSELVES'S ESTATE.

14. "It is not the duty of the sons in such a case to economize in their expenses, but they may spend out of the estate as much as they desire. Nevertheless, if, in the opinion of the Court, the sons are squandering the estate, it is the duty of the Court to act for the daughters and to set aside property sufficient for their support (Tur)."

15. "The foregoing rules of law have application only to a case where the property is sufficient to support both the sons and the daughters until they become of age. If the estate does not suffice for the purposes mentioned, then the Court must set aside property sufficient for the support of the daughters until they become of age, and the balance is given to the sons (L. c.)."

16. "If the father left personal property, even if the fund is insufficient by real, they must both be supported."

21. "If, however, the marriage contract must be paid and such payment will render the estate insufficient, the estate is treated in law as an insufficient estate for the support of the widow. Is two opinions if it is tendered the estate insufficient or not (Baba Bathra 140a)."

22. "If a man leaves a widow and a daughter, either by the widow or by another women, and the estate left by him is sufficient only to support one of them, some authorities are of the opinion that the widow has priority, while other disagree, and both supported until the fund is finished (Baba Bathra 139; see Chap 93)."

23. "The right of female children to receive support from their father's estate has preference over the right of the male children to inherit their mother's rights under her marriage contract (Maimonides)."

24. "If a man dies leaving no sons but daughters of various ages, the estate is to be divided equally among them, and do not say that the small children are entitled to support until they become of age (Baba Bathra 139a)."

## CHAPTER CXIII.

## WHEREFROM THE TENTH OF THE PROPERTY IS TO BE COLLECTED.

1. "If a man dies leaving a daughter, it is to be ascertained how much the man would be willing to give his daughter for her dowry, and this sum is given to her. Such ascertainment is made by either inquiring of his friends, or by considering his business and station of life, or, if he gave dowry to another daughter, by inquiring how much he had given to such daughter. If it is impossible to draw any conclusion therefrom, one-tenth of the estate is given her as her dowry (Maimonides)."

2. "In the distribution of the mother's estate there is a dispute as to whether the daughter takes a tenth or not."

3. "Although the Goanum have enacted that the wife may collect the amount of the marriage contract from the personal property of the husband, the daughter, however, can collect her tenth only from the real property or its rents (Baba Bathra 69a)."

4. "If a man leaves several daughters, whoever is married first takes one-tenth of the entire estate. The next one who marries takes one-tenth of whatever the first has left, and the next one who marries takes one-tenth of whatever the second one has left, etc."

gorgias publishing company, inc.

14. "It is not the duty of the king in such a case to ascertain in their expenses, but they may spend out of the estate as much as they desire. Nevertheless, it is the opinion of the Court, the wife are squandering the estate, it is the duty of the Court to put for the daughters and to set aside property sufficient for their support (Ibn)."

15. "The strongly rules of law have application only to a case where the property is sufficient to support both the wife and the daughters until they become of age. If the estate does not suffice for the purpose mentioned, then the Court must set aside property sufficient for the support of the daughters until they become of age, and the balance is given to the wife (Ibn Qu)."

16. "If the father left personal property, even if the land is insufficient by real, they must both be supported."

17. "If, however, the dowries contract must be paid and such payment will render the estate insufficient, the estate is treated in law as an insufficient estate for the support of the widow. In the opinion it is considered the estate insufficient or not (Ibn Matha Ibn)."

20. "If a man leaves a widow and a daughter, either by the widow or by another woman, and the estate left by him is sufficient only to support one of them, some authorities are of the opinion that the widow has priority, while other disagree, and both supported until the food is finished (Ibn Hatha Ibn: see Ibn QU)."

21. "The right of female children to receive support free that their father's estate has preference over the right of the widow to be maintained by the dividend equally among them, and do not pay that the small children are entitled to support until they become of age (Ibn Hatha Ibn)."

## CHAPTER XXIII.

## MINIMUM TIME LENGTH OF TIME PROPERTY IS TO BE

## DIVIDED.

1. "If a man dies leaving a daughter, it is to be ascertained how much the son would be willing to give his daughter for her dowry, and this sum it is given to her. Such ascertainment is made by either inquiries of his friends, or by considering his position and station of life, or, if he were dowry to another daughter, by inquiring how much he had given to such daughter. If it is impossible to draw any conclusion therefrom, one-tenth of the estate is given her as her dowry (Matmudeo)."

2. "In the distribution of the mother's estate there is a dispute as to whether the daughter takes a sixth or not."

3. "Although the Koran has enacted that the wife may collect the amount of the marriage contract from the personal property of the husband, the daughter, however, can collect her tenth only from the real property or its rents (Ibn Matha 69a)."

4. "If a man leaves several daughters, whoever is married first takes one-tenth of the entire estate. The next one who marries takes one-tenth of whatever the first has left, and the next one who marries takes one-tenth of whatever the second one has left, etc."

5. "If all the daughters get married at one and the same time, the first takes one-tenth of the estate, the second takes one-tenth of what is left, the third then takes one-tenth of the remainder, etc., and then the three sums are added together and divided equally among all the daughters (Ketuboth 68b)."

6. "Even if the tenth cannot be collected till the daughters get married, the Court must take action to determine the property for that purpose."

7. "If the brothers sell the property the daughters can take away the property for the expenditure of their dowry. The daughter must take an oath that she did not receive other dowry."

8. "If one dies leaving a widow and a daughter, the latter is not entitled to the one-tenth prescribed by law, for the reason that the widow's right to support has priority. Even in the event the daughter has died after her marriage, the husband is not entitled to inherit the one-tenth that must be given her as her dowry, because the entire estate is in the possession of the widow in order that she may receive her support therefrom (Baba Bathra 139a)."

9. "A minor orphan, who was married with her consent, and that of her mother or her older brother, and was given a certain sum of money as her dowry, may thereafter demand the dowry provided for her by law, when she becomes of age (Ketuboth 68a; see Chap. 113, Sec. 1)."

9a. "If the daughter was married when she was of age and she was silent in the demand of the dowry provided for her by law; if she received support from her brothers, then she has not lost her right. If the brothers cease to support her and then she was silent on demanding her dowry, she loses her right to the dowry."

10. "If a man dies leaving two daughters and one son, and one of the daughters collects her one-tenth of the estate as her dowry and the other daughter failed to collect her one-tenth before the son died, and the daughters are entitled to the entire estate. In such event the second daughter is not entitled to receive her one-tenth out of the estate. The entire estate is to be divided equally between the daughters, and the first one is not bound to restore the one-tenth she has already received (Ketuboth 69a)."

11. "Some authorities, however, hold that in such a case the second daughter is entitled to her one-tenth of the estate first and then the estate is divided equally among the two daughters (Tur)."

12. "The law providing for a daughter as her dowry one-tenth of the estate applies to a case where sons are left by the deceased. If there are left daughters only, the estate is to be divided equally among them. Even if the older daughters were married during their father's lifetime, the younger daughters cannot claim that they, too, ought to get their dowry from the estate, but the estate is to be divided equally among them. If, however, the older daughters married after their father's death and received their dowry from the estate, the younger daughters are likewise to receive their dowry first and then the estate is divided equally among all the daughters (Baba Bathra 139a)."

13. "If a man commands on his death-bed that his daughter shall not receive a dowry from his estate, that is effective (Ketuboth 68)."

14. "If, however, he makes a condition at the time of her marriage that his daughter shall not receive a dowry on her wedding, that is not effective.(L. c.)."

ondronicus publishing company, Inc.

8. "If all the daughters get married at one and the same time, the first takes one-tenth of the estate, the second takes one-tenth of what is left, the third then takes one-tenth of the remainder, etc., and then the three sums are added together and divided equally among all the daughters (Kentucky 1839)."

9. "Even if the tenth cannot be collected till the daughters get married, the Court must take action to determine the property for that purpose."

10. "If the brothers sell the property the daughters can take away the property for the equivalent of their dowry. The daughter must take an oath that she did not receive other dowry."

11. "If one dies leaving a widow and a daughter, the latter is not entitled to the one-tenth prescribed by law, for the reason that the widow's right to support has priority. Even in the event the daughter may wed after her marriage, the husband is not entitled to inherit the one-tenth that must be given her as her dowry, because the entire estate is in the possession of the widow in order that she may receive her support therefrom (Main Bottom 1839)."

12. "A minor orphan, who was married with her consent, and that of her mother or her other guardian, and was given a certain sum of money as her dowry, may thereafter demand the dowry provided for her by law, when she becomes of age (Kentucky 8&1 ann Chap. III, Sec. 1)."

13. "If the daughter was married when the son of age and she not alive in the demand of the dowry provided for her by law, if she received support from her brothers, they who has not right for right. If the brothers cease to support her and then she was alone on demanding her dowry, she loses her right to the dowry."

14. "If a man dies leaving two daughters and one son, and one of the daughters collects her one-tenth of the estate as her dowry and the other daughter failed to collect her one-tenth before the son died, and the daughters are entitled to the entire estate. In such event the second daughter is not entitled to receive her one-tenth out of the estate. The entire estate is to be divided equally between the daughters, and the first one is not bound to restore the one-tenth she has already received (Kentucky 89a)."

15. "Some authorities, however, hold that it must a case the second daughter is entitled to her one-tenth of the estate first and then the estate is divided equally among the two daughters (Tur)."

16. "The law providing for a daughter as her dowry one-tenth of the estate applies to a case where sons are left by the deceased. If there are infant daughters only, the estate is to be divided equally among them. Even if the older daughters were married during their father's lifetime, the younger daughters cannot claim that they, too, ought to get their dowry from the estate, but the estate is to be divided equally among them. If, however, the older daughters married after their father's death and received their dowry from the estate, the younger daughters are likewise to receive their dowry first and then the estate is divided equally among all the daughters (Main Bottom 1839)."

17. "If a man counsels on his death-bed that his daughter shall not receive a dowry from his estate, that is effective (Kentucky 88)."

18. "If, however, he dying a condition at the time of her marriage that his daughter shall not receive a dowry on her wedding, that is not effective.(L. c.)."

## CHAPTER CXIV.

## LAWS CONCERNING AGREEMENT OF A MAN TO SUPPORT HIS WIFE'S DAUGHTER OR THE DAUGHTER OF A STRANGER.

1. "If a man marries a woman and obligates himself to support her daughter for a period of five years, not specifying when the period is to commence, he is bound to provide such daughter with food and drink for five years next following his marriage, and it is immaterial whether the cost of living is high or low (Ketuboth 101b)."

2. "If he failed to support her during the five years above prescribed, and thereafter the cost to support became low, he is bound to pay for her support at the price when the cost of living was high. If, however, the daughter refused to accept the support within the time mentioned, he may give her the price of her support when the cost of living is low (Tur)."

3. "If, however, the cost of living during the five years was low and then it became high, even if he neglected to provide for her, he must pay for her support when the cost of living was low (L. c.)."

4. "During the time he supports her, her earnings belong to her (L. c.)."

5. "If her mother released her husband from the obligation of supporting her daughter, the release is of no effect (L. c.)."

6. "If the husband dies during the period, his heirs are bound to support her."

7. "The duty to support is like an ordinary debt, and she may collect such support out of property which is sold or in any other way encumbered by him (Misnah)."

9. "If the daughter has a servant he is also bound to support the servant (Taz)."

10. "If the daughter dies during the period she is entitled to receive her support, such right cannot be inherited by her heirs (Tur)."

11. "If the daughter becomes sick during such time, her stepfather must give only the same support as when she was in good health (L. c.)."

12. "If the mother was divorced during the time her husband obligated himself to support her daughter, he must send support to the daughter to the place wherever her mother is to be found, in the same manner as one of his own family (Maimonides)."

13. "If a man engaged his daughter and later the bridegroom and the father desires to break the engagement, this cannot be done without the consent of the daughter."

15. "In any event, however, the stepfather is not bound to provide her with medical treatment (L. c.)."

16. "If the woman whose daughter her husband obligated himself to support, was divorced and married again, and such other husband likewise obligated himself to support her daughter, in such event one must give support and the other must pay her for such support she was to receive from him, and the daughter can choose who will pay and who will give support (Ketuboth 102a)."

ogdensburg publishing company, inc.

LAWS CONCERNING ADMINISTRATION OF A MAN TO SUPPORT HIS WIFE'S DAUGHTER OR THE DAUGHTER OF A STRANGER.

1. "If a man marries a woman and obligates himself to support her daughter for a period of five years, not specifying when the period is to commence, he is bound to provide such daughter with food and drink for five years next following his marriage, and it is immaterial whether the cost of living is high or low (Sherbourn 1208)."

2. "If he failed to support her during the five years above prescribed, and thereafter the cost to support became low, he is bound to pay for support at the price when the cost of living was high. If, however, the daughter refused to accept the support within the time specified, he may give her the price of her support when the cost of living is low (Ibn)."

3. "If, however, the cost of living during the five years was low and then it became high, even if he neglected to provide for her, he must pay for her support when the cost of living was low (L. c.)."

4. "During the time he supports her, her parents belong to her (L. c.)."

5. "If her mother released her husband from the obligation of supporting her daughter, the release is of no effect (L. c.)."

6. "If the husband also during the period, his heirs are bound to support her."

7. "The duty to support is like an ordinary debt, and she must first sue such support out of property which is sold or in any other way mortgaged by him (Minnan)."

8. "If the daughter has a servant he is also bound to support the servant (Ibn)."

10. "If the daughter dies during the period she is entitled to receive her support, such right cannot be inherited by her heirs (Ibn)."

11. "If the daughter becomes sick during such time, her stepfather must give only the same support to whom she is in good health (L. c.)."

12. "If the mother was divorced during the time her husband obligated himself to support her daughter, he must send support to the daughter to the place wherever her mother is to be found, in the same manner as one of his own family (Mishnados)."

13. "If a man opposed his daughter and later the brideroom and the father desires to break the engagement, this cannot be done without the consent of the daughter."

15. "In any event, however, the stepfather is not bound to provide for with medical treatment (L. c.)."

16. "If the woman whom daughter her husband obligated himself to support, has divorced and married again, and such other husband likewise obligated himself to support her daughter, in such event one must give support and the other must pay her for such support she may be receive from him, and the daughter can choose who will and she will give support (Mishnados 1208)."

17. "If the woman was also divorced by her second husband, both husbands are bound to support her daughter for the period undertaken by them. If each one insists upon providing her with food and paying her for the same, the daughter has the right to choose with whom she would prefer to board."

18. "If the daughter is mentally incapable of choosing, she is to receive her board by turns, one week from one stepfather and the other paying her for the same, the other week from the other stepfather and the former paying her cash for the same (Ketuboth 102a; Tur)."

19. "If the daughter is married during the time she has to receive her support from her two stepfathers, her husband must support her, and the two stepfathers must pay her cash in liew of board (L. c.)."

20. "If the man writes in the contract to the effect that he obligates himself to support her daughter as long as she stays with him, he is not obligated to support such daughter in the event of her mother's death, or in the event of her being diverced (L. c.)."

21. "The last stated rule of law applies likewise to a case where he divorces her and subsequently remarries her (Tur)."

22a. "If a man obligates himself to support his son and his daughter-in-law for a certain length of time after the marriage, and in the meantime the son dies, there is a difference of opinion as to whether the daughter-in-law is entitled to be supported until the time expires."

23. "A obligates himself to support B for a period of two years if he married the daughter of a certain man and the daughter dies during the period entitled to receive her support, A is free of his obligation to the daughter's heirs (Rashba)."

24. "If a man obligates himself in writing to give a certain sum of money for his support, in a certain time, if he marries the daughter of a certain man, he is bound to do so even in the event the daughter dies. The reason for this rule of law is that he has not obligated himself to support him for a certain length of time, but has obligated himself to pay a definite sum for his support, and if the man desired he could have insisted upon him paying the entire sum at one and the same time. If, however, the sum thus given was given for him and his wife's support, the man is entitled to his share only and does not inherit his wife's share (Rashba)."

25. "If a man marries a woman and she makes an oral agreement with him that he must give the expense of the marriage to her daughter, and after wards he dies, the heirs must fulfill the obligation, even though the mother collect her marriage contract and the daughter had grown rich (L. c.)."

## CHAPTER CXV.

## WHEN A WOMAN MAY BE DIVORCED WITHOUT RECEIVING THE SUM PROVIDED FOR HER IN THE CONTRACT OF MARRIAGE, AND WHEN A WOMAN LOSES HER RIGHTS UNDER THE CONTRACT OF MARRIAGE.

1. "A woman who violates the Law of Moses or the laws of morality existing among Hebrew women may be divorced by her husband, she forfeiting the amount of money provided for her in her contract of marriage (Ketuboth 72b)."

andronicus publishing company, inc.

IV. "If the woman was also divorced by her second husband, [illegible] husbands are bound [illegible] support her daughter for the period undertaken by [illegible]. If each one [illegible] upon providing her with food and paying her for the same, the daughter has the right to choose with whom she would prefer to reside."

18. "If the daughter is mentally incapable of choosing, she is to receive her food in turns, one week from one stepfather and the other paying her for the same, the other week from the other stepfather and the former paying her each for the same (Kelaboth ICCs: Yur)."

19. "If the daughter is married during the time she has to receive her support from her stepfathers, her husband must support her, and the two stepfathers must pay her each in lieu of board (L. c.)."

20. "If the man writes in the contract to the effect that he obligates himself to support her daughter as long as she stays with him, he is not obligated to support such daughter in the event of her mother's death, or in the event of her being divorced (L. c.)."

21. "The late stated rule of law applies likewise to a case where he divorces her and subsequently remarries her (Yur)."

22. "If a man obligates himself to support his wife and his daughter-in-law for a certain length of time after the marriage, and in the contract the son dies, there is a difference of opinion as to whether the daughter-in-law is entitled to be supported until the time expires."

23. "A obligated himself to support X for a period of two years if he married the daughter of a certain man and the daughter also during the period entitled to receive her support, A is free of his obligation to the daughter's heirs (Mordkh)."

24. "If a man obligates himself in writing to give a certain sum of money for his support, in a certain time, if he marries the daughter of a certain man, he is bound to do so even in the event the daughter dies. The reason for this rule of law is that he has not obligated himself to support him for a certain length of time, but has obligated himself to pay a definite sum for his support, and if the man betaked to second love instead upon his paying the entire sum at one and the same time. If, however, the sum was given for him and his wife's support, the sum is entitled to his share only and does not inure to his wife's share (Mordkh)."

25. "If a man marries a woman and she makes an oral agreement with him that he must give the expense of the marriage to her daughter, and after words be done, the latter must fulfill the obligation, even though the mother obliged her marriage contract and the daughter had grown rich (L. c.)."

## CHAPTER CXV.

### MEN & WOMAN MAY BE DIVORCED AGAINST HE-

### CONSENT OF MARRIAGE, AND MEN & WOMAN

### LOSES HER RIGHTS UNDER THE CON-

### TRACT OF MARRIAGE.

1. "A woman who violates the Law of Moses or the laws of morality existing among Hebrew women may be divorced by her husband, she forfeiting the amount of money provided for her in her contract of marriage (Mordekh Yur)."

3. "If a woman makes a vow and does not fulfill it, she may be divorced without receiving her contract of marriage (Ketuboth 72b)."

4. "The foregoing rule of law applies also to a woman who violates an oath. If, however, in such event she produces evidence to the effect that he likewise is accustomed to violate oaths, she does not forfeit her contract of marriage (Rashba)."

5. "If a woman rejects her faith and thereafter accepts it again, she is treated in law like a woman who violates the Law of Moses, and, therefore, she does not lose her right to the contract of marriage unless she received the necessary warning to that effect (Rosh)."

6. "What constitutes the law of morality (mentioned in Sec. 1, supra)? Whatever rules of morality were accepted by a Hebrew woman; such, for instance, as exposing a certain part of the body in public which in accordance to custom should be covered, or flirting with young men, or if she cursed her husband's parents in her husband's presence. If a woman violates any one of those mentioned above, she may be divorced without obtaining her rights under the contract of marriage, if there are witnesses who testify to the effect that her husband has given her warning and she has disregarded the same (Maimonides)."

7. "In the foregoing event, the husband is not compelled by law to divorce his wife, but it is a meritorious act for him to do so (Rosh)."

8. "A woman who threatens her husband that she is about to hire gangsters to kill him if he would do a certain thing to her, or a woman who is accustomed to be in privacy with another, is considered in law as a woman who violates one of the Laws of Moses (Ra'abad)."

9. "All those enumerated above lose whatever amount or right provided for her in her contract of marriage, whether such right is given her by law, or is given her by the husband of his own volition. She is, however, entitled to get back whatever remains intact of the property she brought upon her marriage, whether such property was guaranteed by her husband or not (Ketuboth 101a)."

10. "If there is no evidence to prove that a wife has committed an act of adultery, but she herself admits it, such admission does not suffice to forbid her living with her husband, because it is probable that she makes such admission for the reason that she loves another man (Nedarim 90b)."

11. "The admission named in the foregoing rule of law, however, suffices to cause her to lose her rights under her contract of marriage, and to whatever is not present of the property she has brought upon her marriage (Tur)."

12. "If the husband has confidence in his wife and believes in what she says, he may divorce her, but he is not forced to do so. If, however, she was forced to commit such adulterous act, she does not lose her rights under the contract of marriage (Nedarim 91a)."

13. "If one witness testifies to the effect that a certain man's wife has committed an adulterous act, or if a man personally sees his wife committing such an act, if he considers the witness as trustworthy, he is bound to divorce her, for he is prohibited from having sexual intercourse with her, but he must pay her whatever is due her under the contract of marriage (Kidushin 66a)."

14. "If, however, the woman herself admits that she has committed such adultery, she is not entitled to the rights under the contract of marriage."

publishing company, inc.

5. "If a woman makes a vow and does not fulfill it, she may be divorced without receiving her dowry or marriage (Ketubot 72b)."

6. "The foregoing rule of law applies also to a woman who violates an oath. If, however, in such event she produces evidence to the effect that he likewise is accustomed to violate oaths, she does not forfeit her contract of marriage (Nedarim)."

7. "If a woman rejects her faith and thereafter accepts it again, she is treated in law like a woman who violates the law of Moses, and, therefore, she does not lose her right to the contract of marriage unless she received the necessary warning to that effect (Yoma)."

8. "What constitutes the law of morality (mentioned in Sec. 7, supra)? Whatever rules of morality were accepted by a Hebrew woman, as for instance, an expecting a certain part of the body in public which is accordance to custom should be covered, or flirting with young men, or if she nursed her husband's parents in her husband's presence. If a woman violates any one of these mentioned above, she may be divorced without forfeiting her rights under the contract of marriage, if there are witnesses who testify to the effect that her husband has given her warning and she disregarded the same (Mishnah)."

9. "If the foregoing events, the husband is not compelled by law to divorce his wife, but it is a meritorious act for him to do so (Gemara)."

10. "A woman who threatens her husband that she is about to hire conjurers to kill him if he would do a certain thing to her, or a woman who is accustomed to be in privacy with another, is considered in law as a woman who violates one of the laws of Moses (Ta'anah)."

11. "All those enumerated above lose whatever amount or right provided for her in her contract of marriage, whether such right is given her by law, or is given her by the husband of his own volition. She is, however, entitled to get back whatever remains intact of the property she brought upon her marriage, whether such property was evaluated by her husband or not (Ketubot 102a)."

12. "If there is no evidence to prove that a wife has committed an act of adultery, but she herself admits it, such admission done not militate to forfeit her living with her husband, because it is possible that she makes such admission for the reason that she loves neither man (Sotah 30b)."

13. "The admission named in the foregoing rule of law, however, must be voluntary to cause her to lose her rights under her contract of marriage, and if whatever is not present of the property she has brought upon her marriage (Sot)."

14. "If, however, the woman herself admits that she has committed such adultery, she is not entitled to the rights under the contract of marriage."

15. "If a woman makes a vow and does not fulfill it, she may be divorced without receiving her dowry or marriage (Ketubot 72b)."

16. "The foregoing rule of law applies also to a woman who violates an oath. If, however, in such event she produces evidence to the effect that he likewise is accustomed to violate oaths, she does not forfeit her contract of marriage (Nedarim)."

17. "If a woman rejects her faith and thereafter accepts it again, she is treated in law like a woman who violates the law of Moses, and, therefore, she does not lose her right to the contract of marriage unless she received the necessary warning to that effect (Yoma)."

18. "What constitutes the law of morality (mentioned in Sec. 7, supra)? Whatever rules of morality were accepted by a Hebrew woman, as for instance, an expecting a certain part of the body in public which is accordance to custom should be covered, or flirting with young men, or if she nursed her husband's parents in her husband's presence. If a woman violates any one of these mentioned above, she may be divorced without forfeiting her rights under the contract of marriage, if there are witnesses who testify to the effect that her husband has given her warning and she disregarded the same (Mishnah)."

19. "If the foregoing events, the husband is not compelled by law to divorce his wife, but it is a meritorious act for him to do so (Gemara)."

20. "A woman who threatens her husband that she is about to hire conjurers to kill him if he would do a certain thing to her, or a woman who is accustomed to be in privacy with another, is considered in law as a woman who violates one of the laws of Moses (Ta'anah)."

21. "All those enumerated above lose whatever amount or right provided for her in her contract of marriage, whether such right is given her by law, or is given her by the husband of his own volition. She is, however, entitled to get back whatever remains intact of the property she brought upon her marriage, whether such property was evaluated by her husband or not (Ketubot 102a)."

22. "If there is no evidence to prove that a wife has committed an act of adultery, but she herself admits it, such admission done not militate to forfeit her living with her husband, because it is possible that she makes such admission for the reason that she loves neither man (Sotah 30b)."

23. "The admission named in the foregoing rule of law, however, must be voluntary to cause her to lose her rights under her contract of marriage, and if whatever is not present of the property she has brought upon her marriage (Sot)."

24. "If, however, the woman herself admits that she has committed such adultery, she is not entitled to the rights under the contract of marriage."

25. "If one witness testifies to the effect that a certain man's wife has committed an adulterous act, or if a man personally sees his wife committing such an act, if he considers the witness as trustworthy, he is bound to divorce her, for he is prohibited from having sexual intercourse with her, but he must pay her whatever is due her under the contract of marriage (Kidushin 66a)."

15. "In the event a husband personally sees his wife commit an adulterous act, he may impose upon her an oath to the effect that she has not gone astray on previous occasions while married to him as a condition that she be entitled to collect whatever she is entitled to under her contract of marriage. But if the committing of such act is established by the testimony of one witness, the husband cannot impose such an oath as a condition to her collecting whatever she is entitled to under her contract of marriage."

## CHAPTER CXVI.

## LAWS CONCERNING THE MARRIAGE OF PROHIBITED WOMEN.

1. "If a man marries a woman, by the marriage of whom he violates a prohibitory command of the Torah, if he has done it with consent, he is bound to pay her the entire amount provided for her in the contract of marriage, whether such provision is made by law or by his own free will, when he divorces her (Ketuboth 100b)."

2. "In the event the man dies, she is entitled to support, but during his lifetime she is entitled to no support whatsoever. Even in the event she borrows money for her support, he is not bound to pay the same (Yebamoth 85a)."

3. "If, however, the man was not aware of the fact that the woman was forbidden to him, she is not entitled to the sum of money provided for her by law, but she is entitled to whatever sum her husband of his own free will has provided for her in the contract of marriage. Neither is she entitled to any support after his death (Ketuboth 101b)."

4. "He is not bound to pay for the use of the fruits of her property during the time they were married, and he is not bound to release her from capativity (Yebamoth 89a)."

5. "She is entitled to whatever property she brought upon her marriage, whether such property was guaranteed by the husband or not. If any of the guaranteed property was either lost, stolen or destroyed, the husband is not liable therefor. If any of the unguaranteed property was either lost, stolen or destroyed, the husband is liable for the same (Yebamoth 101a)."

6. "If one marries a woman, for the marriage of whom he is guilty of violating an affirmative commandment of the Torah, even if he was not aware of such violation, the rights of the woman are analogous to those of a case where a man marries a woman whereby he violates a prohibitory commandment and he was aware of such violation (Maimonides)."

7. "If a man marries a woman, knowing that she is incapable of conception, she is considered in law like any ordinary woman, and, therefore, she is entitled to everything provided for her in the contract of marriage, and the husband is likewise entitled to all the rights of a husband is entitled to under the law. If he was not aware that she was a woman incapable of conception, her rights are analogous to those of a woman for whose marriage a prohibitory commandment is violated and where the husband was not aware of such violation (Ketuboth 101b)."

8. "If one marries a woman who is forbidden to him by rabbinical enactment, whether he was aware of such prohibition or not, the rights of the woman in such an event are equivalent to those of a woman forbidden by a prohibitory commandment and where the husband is not aware of such violation (Yebamoth 85b)."

publishing company inc.

9. "In the last-named event, however, the woman's rights as relates to her own property, whether such property was guaranteed by the husband or not, are not altered (Ketuboth 101a)."

## CHAPTER CXVII.

## LAWS CONCERNING A WOMAN WHO IS INCAPABLE OF BEARING OR HAS ANY OTHER DEFORMITIES OF BODY.

1. "If a woman was declared by expert opinion to be unable to have cohabitation with her husband, she is not entitled to any of the provisions embodies in her contract of marriage. If the husband contends that she is unable to cohabit with him, she is not entitled to support before she is examined to that effect (Tur)."

2. "If one marries a woman and thereafter it is found that she has one of the deformities or defects enumerated in Chapter 39 (supra), and the husband was not aware of it, she is not entitled to any of the rights provided for her in the contract of marriage (Ketubeth 72b)."

3. "If the woman's defects are such as undoubtedly existed prior to her marriage, as when she has one finger too many, or the like, her father must produce evidence to prove that her husband knew of such deformity and still consented to marry her. If he fails to produce such evidence, she loses all rights provided for her in her contract of marriage (Ketuboth 76a)."

4. "If the woman's deformities are such as are likely to have come into existence subsequent to her betrothal, and the husband discovered them after their marriage, the husband must come forward with evidence to prove that such deformities existed prior to the betrothal and consequently his marriage is not binding, having been accomplished through error. If he discovered the deformities while she was still in her father's house, the father must produce evidence to prove that such deformities have come into existence after the betrothal had taken place and consequently it is his misfortune (Ketubeth 75b)."

5. "If the husband produces evidence to the effect that her deformities have existed prior to the betrothal, and the father produced evidence to the effect that the husband saw the deformities before the betrothal and was satisfied, the husband is bound to pay his wife whatever was provided for her in her marriage contract (L. c.)."

6. "If a man has lived with his wife for some length of time and thereafter claims that he has discovered in her a deformity which he had not noticed before, his contention is of no effect, even if that deformity happens to be in a place not readily detected by the eye, such as under the breasts or on the sole of the foot or the like; because it is presumed that no man would drink out of a cup without first thoroughly examining it (L. c.)."

7. "If a man becomes aware that his wife is an epileptic and he wants to divorce her, but possesses no means wherewith to pay her the amount due her under the contract of marriage, she is forced to accept a divorce from him. He is bound to give whatever money he has at the time the divorce takes place, and the balance he will pay her whenever he is able to do so (Rosh)."

8. "If she refuses to accept the bill of divorce, he has a right to withhold from her support and clothing and to deny her marital rights (L. c.)."

andronicus publishing company, inc.

CHAPTER CXVII.

LAWS CONCERNING A WOMAN WHO IS INCAPABLE OF

MARRYING OR HAS ANY OTHER IMPEDIMENTS

OF BODY.

1. "If a woman was married by expert eunuchs to be unable to have connection with her husband, who is not entitled to any of the provisions mentioned in her contract of marriage. If the husband asserts that she is unable to consult with him, she is not entitled to support before she declared to that effect (Ibn)."

2. "If the marriage's wrong and therefore it is found that the cause of the deformities or defects enumerated in chapter 22 (supra), and the husband was not aware of it, she is not entitled to any of the rights provided for her in the contract of marriage (Ibn Rushd 2nd)."

3. "If the woman's deformities are such as unnaturally exhaled and/or her residence, as when she has consumption, or the like, but rather must produce evidence. If there is doubt as to the existence of such deformities and still expected to marry her. If he fails to produce such evidence, she loses all rights provided for her in her contract of marriage (Ketubah 70a)."

4. "If the woman's deformities are such as are likely to have come into existence subsequent to her betrothal, and the husband discovered them after their marriage, the husband must come forward with evidence to prove that such deformities existed prior to the betrothal and consequently his marriage is not binding, having been accomplished through error. If the husband discovered the deformities while she was still in her father's house, the latter must produce evidence to prove that such deformities have come into existence after the betrothal had taken place and consequently it is his misfortune (Ketubah 70b)."

5. "If the husband produces evidence to the effect that her deformities have existed prior to the betrothal, and the father produced evidence to the effect that the husband has the deformities before the betrothal and was satisfied, the husband is bound to pay his wife whatever was provided for her in her marriage contract (Ib. ca.)."

6. "If a man has lived with his wife for some length of time and thereafter claims that he has discovered in her a deformity which as had not existed before, his contention is of no effect, even if that deformity happens to be in a place not usually detected by the eye, such as under the breasts or on the sole of the foot or the like; because it is presumed that he can would drink out of a cup without first thoroughly examining it (Ib. ca.)."

7. "If a man become aware that his wife is an epileptic and he wants to divorce her, but possesses at least sufficient to pay for the dower for under the contract of marriage, she is forced to accept a divorce from him. He is bound to give whatever money he has at the time the divorce takes place, and the balance he will pay her whenever he is able to do so (Ibn)."

8. "If she refuses to accept the bill of divorce, he has a right to withhold from her support and clothing and to deny her marital rights (Ib. ca.)."

## CHAPTER CXVIII.

### LAWS CONCERNING DOWRY RIGHTS OF A WOMAN.

1. "If a man, at the time of his marriage, gives his wife a promissory note for a certain sum of money to be collected from him when she demands it; if she collects such money from him, he must buy real property therewith, and he is entitled to make use of the fruits of such property (Rosh)."

2. "If, in the foregoing event, she contracted a debt after her marriage, not for support, the creditor cannot collect the note from her husband. If, however, she contracted the debt prior to her marriage, he may collect the note from the husband (L. c.)."

3. "If the note is made to be collected by her either when she is divorced or becomes a widow, her creditor cannot collect his debt from it, and the note is not to be sold in order to satisfy such debt (L. c.)."

4. "If the husband makes a gift to his wife after the marriage, the creditor can collect from the gift even in the event she contracted the debt after her marriage (L. c.)."

5. "An enactment was made in the City of Tultilo, that if the amount of the marriage contract of the widow is more than half of the estate of the deceased, she can only receive half of the estate; e.g., the estate is worth $400 and the marriage contract and the dowry amounts to $300, she receives only half of the estate, or $200 (Rosh)."

6. "If the husband is in debt he must settle with all claimants, and afterward divide the residue of the estate with the heirs of the wife."

7. "Even if the wife died before her husband without leaving issue, then her heirs are entitled to her dowry and marriage contract (Rosh Rame 8)."

8. "If the widow was silent of the dividing with the heirs of the husband, according to the enactment, she will not lose the support of the past time."

9. "If a woman and her son died and it is uncertain who died first, and the husband contends that his wife died first, and thereafter the son died, and consequently he is entitled to inherit all property, because he is the legal heir of the son, and her relatives contend that her son died first, and thereafter she died, and they are entitled to half of the estate according to the enactment, the heirs of the woman have to produce evidence to substantiate their contention, because the estate is in the possession of the husband, and nine points of the law is in his favor."

10. "If one marries a woman who is no longer capable of bearing children, and he takes an oath to the effect that he shall not marry another woman without her consent, he cannot be free from such oath without her consent (L. c.)."

11. "If a man takes an oath to the effect that he shall give away one-half of his earnings to a certain man, and by doing so he is unable to support his wife, he must nevertheless fulfil his oath (L. c.)."

12. "If a widow has taken away her husband's entire estate in payment of her contract of marriage, she is not bound by law to provide her husband with a burial (L. c.)."

13. "Even if the estate suffices only to provide the man with burial expenditures, she is entitled to take it in payment of her contract of marriage, and he will be buried out of the charity treasury (L. c.)."

Lexicus publishing company, Inc.

## LAW QUESTIONS.

5. "If a man bought a field and makes a condition that his wife shall not have the right to collect the amount mentioned in the marriage contract, such condition is invalid (L. c.)."

"This same rule applies to a man who buys a field in another's name, with the intent that his wife shall not collect the amount mentioned in the marriage contract from them. This is not legal."

6. "Should a widow own an estate and decide to marry, she then transfers all her fortune to her daughter or to a stranger; after this she marries and her husband dies or divorces her then she can recover her fortune from her daughter or stranger. It is understood that this transfer was made that the husband shall not have the right to the estate (Ketuboth 79; Jewish Code, Chapter 71, Part 4)."

28. "If a man is condemned to die or committed to prison for life, he is forced to divorce the wife and to return to her the amount of the marriage contract."

29. "If, however, it is for a certain length of time, and if sufficient support is left, he cannot be forced to divorce her; if there is insufficient support and she had not taken any part in the crime, then he can be forced to divorce her and return the money of the marriage contract (Ketuboth 77; see Jewish Code, Chap. 177)."

## INTRODUCTION TO THE LAW OF DIVORCE.

"All the commandments of the Holy Torah were given for the welfare of society, that people in their social life may live happily with one another and in perfect security. The Talmud, therefore, interprets the verse in Leviticus 18: 'That a man may perform them and live with them,' that a man may with such laws promote his welfare through life, but not that the observer of them should forfeit his life on account of them."

"Therefore, when the life of any person is at stake, it is permissible to violate wilfully any law, no matter how severe, in order to save the life of such individual. Nay, the Talmud lays it down as a rule of law that even the Holy Sabbath may be profaned in order to save the life of even one person (Sabbath 107; Yumo 85)."

"And for the same reason, our Torah has commanded us that if lawfully married husband and wife cannot, for one reason or another, live happily together as husband and wife, that under such circumstances a man may divorce his wife. As was rightly expressed by the great philosopher, 'It is better that four persons shall laugh than two persons should cry.' It was, therefore, laid down in the Torah."

Deuteronomy xxiv, 1: "When a man hath taken a wife, and married her, and it come to pass that if she find no favor in his eyes, because he hath found some scandalous thing in her, he may write her a bill of divorcement, and give it in her hand, and send her away out of his house."

"According to the law as laid down in the Talmud (Yebamoth 112b), a man is permitted to divorce his wife without securing her consent thereto. It is for this reasen that the Talmud (Gittin 90) has said: 'He who divorces his first wife, for him even the very altar sheds tears of grief'."

"However, now the view of Rabeni Gershom prevails that a man is not permitted to divorce his wife without first securing her consent thereto,

publishing company inc.

## LAW QUESTIONS.

5. "If a man bought a field and made a condition that his wife shall not have the right to collect the amount mentioned in the marriage contract, such condition is invalid (L. c.)."

"This same rule applies to a man who buys a field in another's name, with the intent that his wife shall not collect the amount mentioned in the marriage contract from that. This is not legal."

6. "Should a widow who is entranced desirous to marry, she then transfers all her fortune to her daughter or to a stranger; after this she marries and her husband dies or divorces her then she can recover her fortune from her daughter or stranger. It is understood that this transfer was made that the husband shall not have the right to the estate (Kethoubh 79; Jewish Code, Chapter 71, Part 4)."

7. "If a man is condemned to die or committed to prison for life, he is forced to divorce the wife and to return to her the amount of the marriage contract."

8. "It, however, it is for a certain length of time, and if sufficient support is left, he cannot be forced to divorce her; if there is insufficient support and she had not taken any part in the crime, then he can be forced to divorce her and return the money of the marriage contract (Kethoubh 77; see Jewish Code, Chap. 177)."

## INTRODUCTION TO THE LAW OF DIVORCE.

"All the commandments of the Holy Torah were given for the welfare of society, that people in their social life may live happily with one another and in perfect security. The Talmud, therefore, interprets the verse in Leviticus 18: 'That a man may perform them and live with them,' that a man may with such love provide his welfare through life, but not that the observer of them shall forfeit his life on account of them."

"Therefore, when the life of any person is at stake, it is permissible with utmost ease, no matter how severe, in order to save the life of such individual. May, the Talmud lays it down as a rule of law that even the Holy Sabbath may be profaned in order to save the life of even one person (Sabbath 132; Tract 85)."

"And for the same reason, our Torah has commanded us that if lawfully married husband and wife cannot, for one reason or another, live happily together as husband and wife, that under such circumstances a man may divorce his wife. As was rightly expressed by the great philosopher, 'It is better that four persons shall laugh than two persons should cry.' It was, therefore, laid down in the Torah."

Deuteronomy xxiv, 1: "When a man takes a wife, and marries her, and it come to pass that if she find no favor in his eyes, because he hath found some reprehensible thing in her, he may write her a bill of divorcement, and give it in her hand, and send her away out of his house."

"According to the law as laid down in the Talmud (Yebamoth 113), a man is permitted to divorce his wife without securing her consent thereto. It is for this reason that the Talmud (Gittin 90) has said: 'He who divorces his first wife, for his even the very altar sheds tears of grief.'"

"However, now the view of Rabbenu Gershom prevails that a man is not permitted to divorce his wife without first securing her consent thereto,

unless where the woman has violated the Laws of Moses, or when she has not given birth to children after the expiration of ten years from the day of their marriage. In the latter event, the husband may either divorce his wife by force, or he is permitted to marry another woman. Therefore, it is now no violation either of law or morality to divorce a wife if her consent is secured thereto (Ran)."

"It is deplorable that many uneducated people nowadays, upon securing a legal divorce either from the husband or the wife, marry another without first obtaining a religious divorce from a rabbi or some one competent to judge. The children of the second marriage are, according to the Hebrew law, illegitimate."

"A marriage contract, when entered into by the parties, is made in accordance with the Laws of Moses and Israel. The groom expressly says to his wife-to-be: 'Thou are betrothed to me in accordance with the Laws of Moses and Israel.' Consequently the dissolution of such marriage cannot become effective unless the contract is dissolved in accordance with the Laws of Moses and Israel. A contract may be rescinded only by the same parties and under the same conditions it has been made."

"If a man marries a woman who represents herself as having been divorced, and later he learns that she procured only a civil divorce, so that according to our laws their children are illegitimate and he is prohibited from continuing to live with her, what are his rights even in the civil courts? She has procured the marriage by false representations as a very material fact and the husband could sue to have the marriage annulled upon that ground. Under the Jewish laws no divorce between them is necessary, for there never was a valid marriage."

"No government or any legislative or judicial body can or may dictate that a marriage originally effected through the Laws of Moses and Israel should be dissolved by a different law. Jews are bound to recognize the law of the country they live in (Baba Kamma 117)."

"It is, by the law of reciprocity and mutuality, the duty of any government to recognize as a legal and binding divorce when given by a competent rabbi in accordance with the laws of Jewish jurisprudence."

## CHAPTER CXX.

1. "The bill of divorce must be written either by the husband in person or by his duly appointed agent (Kidushin 41)."

3. "It is, therefore, customary that when the husband is present the scribe gives all the writing materials to the husband in the nature of a gift, before writing the bill of divorce (Bal Hoetur)."

4. "The husband must pay the scribe's fees. If the woman pays for the writing of the divorce, she must first give such money as a gift to her husband and he then pays it to the scribe, in order that the fees paid may be legally his (Baba Bathra 167)."

## CHAPTER CXXI.

1. "It is necessary that the husband must be of sound mind from the time the writing of the bill of divorce is commenced to the time it is delivered by him to the wife (Gittin 67)."

4. "A person on his death bed may divorce his wife if he is conscious and is able to speak. If he is unconscious and unable to speak, he cannot divorce his wife (Kidushin 71)."

...publishing company, Inc.

CHAPTER SIXX.

1. "The bill of divorce must be written either by the husband in person or by his duly appointed agent (Kiddushin 41)."

3. "It is, therefore, customary that when the husband is present the scribe gives all the writing materials to the husband in the nature of a gift, before writing the bill of divorce (Bet Shammai)."

4. "The husband must pay the scribe's fees. If the woman pays for the writing of the divorce, she must first give such money as a gift to her husband and he then pays it to the scribe. In order that the fees paid may be legally his (Baba Bathra 167)."

CHAPTER SIXXI.

1. "It is necessary that the husband must be of sound mind from the time the writing of the bill of divorce is commenced to the time it is delivered by him to the wife (Gittin 67)."

4. "A person on his death bed may divorce his wife if he is conscious and is able to speak. If he is unconscious and unable to speak, he cannot divorce his wife (Kiddushin 7)."

CHAPTER CXXIII.

1. "All Israelites are competent to write a bill of divorce, but not a heathen, deaf and dumb, the insane and a minor. Even the woman herself is permitted to write the divorce with the permission of the husband. In such event, however, she must first convey the bill to her husband and thereafter the husband delivers the same to her (Gittin 23)."

CHAPTER CXXVII.

1. "The bill of divorce must be dated. If it bears no date, it is invalid, and the woman receiving it is not permitted to re-marry. If, however, the woman does re-marry after receiving a bill which is not dated, she is not bound to be divorced from such marriage, even if she has had no issue by the same (Gittin 87)."

2. "The bill of divorce must be written and attested to by the witnesses on one and the same day. If it is written during the day time and attested to by witnesses the following night, it is invalid, because the night belongs to the following day (Gittin 17)."

CHAPTER CXXVIII.

1. "It in necessary that the name of the town where the bill is written be mentioned in the bill of divorce. It is likewise necessary to mention the name of the place where the husband and wife are found at the time the bill of divorce is written (Gittin 79)."

CHAPTER CXXIX.

1. "The name of the man and the woman must be mentioned in the bill of divorce. If a man has two names, the name by which he is generally known should be written in the bill, and it must be stated thus: Such and such a man known by such and such a name, and any other name by which he may be known, is divorcing a woman known by such and such a name or by any other name by which she may be known (Gittin 34)."

CHAPTER CXXX.

1. "Two competent witnesses must sign their names to the bill of divorce below the last line thereof. There should be left no space vacant between the body of the bill, and the signatures of witnesses, wide enough for two lines to be written in (Gittin 87)."

2. "Before the witnesses attach their signatures to the bill the ink must be perfectly dry."

CHAPTER CXXXI.

1. "The bill of divorce must be exclusively written for the man and the woman who seek the divorce. If a scribe writes a bill of divorce for practicing purposes, and thereafter the name of one seeking a divorce corresponds to the name mentioned in such bill, it is invalid for the purpose sought, because it was not exculsively written for the parties (Gittin 24)."

antiquarian publishing company, inc.

CHAPTER CXXXII.

1. "All Israelites are competent to write a bill of divorce, but not a heathen, deaf and dumb, the insane and a minor. Even the woman herself is permitted to write the divorce with the permission of the husband. In such event, however, she must first convey the bill to her husband and thereafter the husband delivers the same to her (Gittin 80)."

CHAPTER CXXXII.

1. "The bill of divorce must be dated. If it bears no date, it is invalid, and the upon receiving it is not permitted to re-marry. If, however, the woman does re-marry after receiving a bill which is not dated, she is not bound to be divorced from such marriage, even if she has had intercourse by the same (Gittin 87)."

2. "The bill of divorce must be written and attested to by the witnesses on one and the same day. If it is written during the day time and attested to by witnesses the following night, it is invalid, because the night belongs to the following day (Gittin 1)."

CHAPTER CXXXIII.

1. "It is necessary that the name of the town where the bill is written be mentioned in the bill of divorce. It is likewise necessary to [illegible] and with are found at the

CHAPTER CXXIX.

1. "The name of the man and the woman must be contained in the bill of divorce. If a man has two names, he name by which he is generally known should be written in the bill, and it must be stated that such and such a man known by such and such a name, and any other name by which he may be known, is divorcing a woman known by such and such a name or by any other name by which she may be known (Gittin 36)."

CHAPTER CXXX.

1. "Two competent witnesses must also study words to the [illegible] divorce below the last line thereof. There should be left no space vacant between the body of the bill, and the signatures of witnesses, wide enough for two lines to be written in (Gittin 87)."

2. "Before the witnesses attach their signatures to the bill the ink must be perfectly dry."

CHAPTER CXXXI.

1. "The bill of divorce must be exclusively written for the man and the woman who seek the divorce. If a scribe writes a bill of divorce for practicing purposes, and thereafter the case of one seeking a divorce corresponds to the one mentioned in such bill, it is invalid for the purpose sought, because it was not exclusively written for the parties (Gittin 20)."

## CHAPTER CXXXII.

1. "The bill of divorce must be written for the woman when she is subject to being divorced; i.e., after marriage; if a man writes a bill of divorce for his intended wife before marriage, he cannot divorce her therewith after marriage (Yawmoeth 52)."

## CHAPTER CXXXIII.

1. "The bill of divorce must be delivered by the husband to the woman in the presence of two competent witnesses (Gittin 86)."

## CHAPTER CXXXIV.

1. "In order that a bill of divorce may be vaild, it is necessary that the husband annul all previous notification. For, if a man gives notice to two witnesses, saying: 'Know you that the bill of divorce I am about to deliver to my wife is given under duress, and, therefore, I say that you in order that it shall be considered null and void,' the bill of divorce is as a result invalid (Eruchin 21)."

## CHAPTER CXXXV.

1. "The witnesses, in whose presence the bill of divorce is delivered, must read it before delivery. It is likewise preferable that they read it after delivery. If, however, they read it only after delivery to her, the divorce is valid (Gittin 19)."

## CHAPTER CXXXVI.

1. "The husband, upon delivering the bill of divorce to his wife, must say to her in the following words: 'Behold, here is your bill of divorce; accept your bill of divorce; and behold, you are divorced from me; and behold, you are permitted to marry any man from now on' (Gittin 78)."

## CHAPTER CXXXVII.

1. "It is necessary that the release thus given by the husband must be absolute and not conditional. If the husband says: 'You are hereby permitted to marry any man except such and such a person,' the divorce is invalid. If he does impose such condition upon delivering the divorce, he must take the bill back from her, and then give it again to her, saying: 'Behold, you are permitted to marry anybody you please' (Gittin 82)."

## CHAPTER CXXXVIII.

1. "The bill of divorce must be delivered from the hand of the husband into the hand of the woman. If he says to her: 'Take your bill of divorce from upon the ground,' it is invalid (Gittin 78)."

## CHAPTER CXXXIX.

1. "If the husband throws the bill of divorce into the court belonging to his wife, the divorce is valid, and is immaterial whether she has title to such court, or whether it was loaned or hired by her (Gittin 77)."

publishing company, Inc.

CHAPTER CXXXII.

1. "The bill of divorce must be written for the woman who is subject to [illegible] divorcement if a man writes a bill of divorce for [illegible] betrothed wife before marriage, he cannot divorce her there-with after marriage (Yevamoth 89)."

CHAPTER CXXXIII.

1. "The bill of divorce must be delivered by the husband to the woman in the presence of two competent witnesses (Gittin 86)."

CHAPTER CXXXIV.

1. "In order that a bill of divorce may be valid, it is necessary that the husband annul all previous conditions. For, if a man gives notice to his witnesses, saying: 'Know you that the bill of divorce I am about to deliver to my wife is given under duress, and, therefore, I now state you in order that it shall be considered null and void,' the bill of divorce is on a result invalid (Gittin 21)."

CHAPTER CXXXV.

1. "The witnesses, in whose presence the bill of divorce is delivered, must read it before delivery. It is likewise permissible that they read it after delivery. If, however, they read it only after the divorce to her, the divorce is void (Gittin 19)."

CHAPTER CXXXVI.

1. "The husband, upon delivering the bill of divorce to his wife, may do so in the following words: 'Behold, here is your bill of divorce; accept your bill of divorce and behold, you are divorced from me and behold, you are permitted to marry any one from now on' (Gittin 78)."

CHAPTER CXXXVII.

1. "It is necessary that the release from the husband must be absolute and not conditional. If the husband says: 'You are hereby permitted to marry every man and wish a person,' the divorce is invalid. If he does [illegible] condition upon delivering to her, 'Behold, you are permitted to marry anybody you please' (Gittin 90)."

CHAPTER CXXXVIII.

1. "The bill of divorce must be delivered from the hand of the husband into the hand of the woman. It be also to [illegible] bill of divorce from upon the ground,' it is invalid (Gittin 88)."

CHAPTER CXXXIX.

1. "If the husband throws the bill of divorce into the court belonging to his wife, the divorce is valid, and is immaterial whether the title to such court, or whether it was leased or hired by her (Gittin 90)."

2. "The foregoing rule of law, however, applies only to a case where the woman is standing in the court at that time, and the court is absolutely under her care and control. If the woman is not standing there, although the court is in her absolute care and control, the delivery is invalid, and she is not divorced (L. c.)."

## CHAPTER CXL.

1. "The husband may appoint an agent for the purpose of delivering a bill of divorce to his wife. The divorce takes effect in such a case only when the bill is actually delivered by the agent unto the woman. Therefore, the husband may retract before the bill was actually delivered to her (Gittin 62)."

2. "A woman may appoint an agent to accept a bill of divorce from her husband. In such event, the divorce becomes effective as soon as the bill is delivered to the agent. The agent is subrogated to the rights of the woman in every respect. If, therefore, the bill of divorce is thrown into his court or into his four cubits, it is valid. Upon delivering the bill to the woman's agent, the husband must say to him: 'Accept this bill of divorce for my wife' (L. c. 62)."

## CHAPTER CXLI.

1. "A woman may appoint an agent for the purpose of accepting for her the divorce from the hand of the agent appointed by her husband, but she cannot appoint her husband's agent to become her's for the purpose of accepting the bill (Gittin 63)."

2. "In the event the husband appoints an agent, he must give him a power of attorney in writing, and it must be written thus: 'Before us, the undersigned witnesses, so and so has delivered a bill of divorce into the hand of so and so to deliver it to his wife so and so; he shall deliver it to her wherever he may find her; he may deliver it to her in person, or to her agent, or to her agent's agent; that your hand shall be like my hand, your mouth shall be like my mouth, your speech like my speech, your act like my act; and I give you permission to appoint another agent, not in person, but through mail' (Beth Joseph)."

## CHAPTER CXLIII.

1. "It is permissible to divorce upon a certain condition. If the condition is complied with, the divorce is valid; if it is not complied with, it is invalid (Gittin 74)."

2. "A condition shall be not embodied in a bill of divorce. The bill must be written in the ordinary prescribed form, and if he wishes to impose any condition, he may do so in the presence of the witnesses when he delivers the bill to his wife (See Chap. 38)."

## CHAPTER CLIV.

### A MAN OR A WOMAN MAY BE COMPELLED TO DIVORCE.

1. "These men shall be compelled to divorce their wives and to pay them the amount of the marriage contract (Ketuboth 71)."

2. "If bad odors come from his mouth or nose, the woman can compel the husband to divorce her and to give her the amount mentioned in the marriage contract (L. c.)."

publishing company, inc.

3. "But, if she knew of his sickness previous to her marriage with him, she cannot claim a divorce (L. c.)."

4. "If she wants to, she can live with him (L. c.)."

5. "If the husband suffers from leprosy of the body, he is compelled to divorce her and to return to her the amount mentioned in the marriage contract. Even if she is willing to live with him, it is not permitted, on account of her health (L. c.)."

6. "It is disputed whether or not a convert shall be forced to divorce his wife, provided he does not force her to violate the law of Moses or the laws of morality."

7. "If a man is discovered, or if he admits, visiting adulterous women, he is compelled to divorce his wife and to return to her the amount mentioned in marriage contract (Ramo)."

8. "If a man refuses or cannot support his wife, because he is poor, he may be compelled to divorce her, and the money mentioned in the marriage contract may remain a debt which he must pay when able."

9. "If he refuses to cohabit with his wife, he may be compelled to grant her a divorce and to return to her the amount of the marriage contract."

10. "If a man is often in bad temper and drives his wife from his house, he is compelled to divorce her, because in this manner he deprives her of support and cohabitation, and he must return to her the amount of the marriage contract."

11. "If a man often smites his wife, it is the duty of the Court to warn him--they may excommunicate him, and even smite him so that he should not hurt his wife again. If he does not obey, some authorities hold that he may be compelled to divorce her, after being warned twice. But this law can be enforced only if he provoked the quarrels."

12. "If she is a shrew, and curses him, or slanders his parents, and after warning by her husband she does not take heed--it is disputed whether she may be punished. Some hold that even if the accusation is true she may not be struck."

13. "If it is uncertain as to who started the quarrel, she is more believed, because a woman is of a weaker nature and would not be apt to become offensive."

14. "Evidence may be secured from neighbors. If it is proved that she is a shrew--that she cursed him, or slandered his parents, and that she had been warned twice--he may secure a divorce and need not return to her the amount of the marriage contract."

15. "If a woman departs from the home of her husband because he is violent and he has smitten her, and she contracts debts for her support, he must pay them. But, if a woman departs from the home of her husband of her own accord, he is not responsible for debts contract by her for her support."

16. "If a man became crippled; if he lost a hand, a foot, after his marriage, and his wife refuses to live with him, he cannot be compelled to divorce her (Ketuboth 77)."

17. "Some hold that if he lost both hands, or his feet, after his marriage, and his wife refuses to live with him, he may be compelled to grant her a divorce and to return to her the sum of the marriage contract (Tur; Koch)."

18. "If a man is subject to spells of insanity, becoming worse every day, and his wife claims that she fears to live with him because of his violence, that she only married him because she was poor, and because her father advised her to marry him, since he could not provide her with a dowry, he cannot be compelled to divorce her because she may not be telling the truth (Tur)."

19. "If a man has epileptic spells, and there is no danger in cohabiting with him, authorities differ whether he can be compelled to divorce his wife. Some hold that he cannot be compelled to divorce her, but she cannot be forced to stay in his home."

20. "If there is danger in cohabiting with him, he may be compelled to divorce his wife and to return to her the amount of the marriage contract."

21. "If a man wishes to go away for a long journey without the consent of his wife, he may be compelled to divorce her and he must return the amount of the marriage contract. But, if he has not the money, he remains in her debt."

22. "If danger threatens him and he is compelled to run away from the city or he is committed to prison, he may be forced to divorce the wife and to return to her the amount of the marriage contract (Ketuboth 77; Tur)."

23. "If, after ten years of married life, a couple are childless, he must divorce his wife and return to her the amount of the marriage contract; but she may marry again (Yabamoth 64)."

24. "If, after being married to a second man ten years she is still childless, he may be compelled to divorce her; but she cannot marry a third time."

25. "If, at a time during this period he was absent from home, or if he or she had been sick, the period of his absence or the period of his or her sickness cannot be included as part of the ten years."

26. "If she gave birth to a dead child, the ten years period begins after the event."

27. "If she gave birth three times to dead children, he may be compelled to divorce her; but she may marry another man."

28. "However, if she marry a third man she must be divorced and cannot receive the money of the contract of marriage (L. c.)."

29. "If the third husband was aware that she is childless when he marries her, she is entitled to the money of the contract of marriage (L. c.)."

30. "If a husband claims that his wife gave birth to a dead child during a period of ten years, and she denies it, the wife must be believed."

31. "If the husband claims that his wife gave birth to two dead children, and she claims to have given birth to three dead children, the wife's testimony is accepted as true."

32. "If the woman marry a fourth man, and she bears children, she cannot demand the money of the marriage contract from the third one, because he can say that she has improved in her health now, and, therefore, is able to bear children."

33. "If a man marries a woman forbidden to him, even by the Rabbinical enactment, he can be forced to divorce her if he disobeys; the Court can punish him by boycotting him in business, refusing to his children the right to circumcision, and he cannot receive burial rites; and they can impose any other punishment that they may find necessary to force him to divorce the forbidden woman (Chapter 154)."

34. "If a husband refuses to cohabit with his wife, he can be excommunicated until he is repentant (L. c.)."

35. "If an unmarried man cohabits with an unmarried woman, it is preferable that he marry her, although he cannot be forced to do so, except, however, if he promise to marry her, in which event he must fulfill his promise (Chapter 177)."

36. "If two men cohabit with the unmarried woman, the first being married and the other unmarried, it is preferable that the unmarried man marry the woman (B. K. 33)."

37. "A harlot was promised from her visitor compensation. She can demand it if he admitted and if he confesses it; he must take an oath to prove his innocence (B. m. 91a)."

38. "If a man induces a harlot to cohabit with him upon his promise of marriage, he is compelled to marry her, if he admits his promise. If he denies such promise he must take an oath."

39. "If she becomes pregnant as a result of such cohabitation, and she demands support for the child, her claim is not tenable during pregnancy. However, when the child is born and the visitor admits that it is his child, he is liable to support (see Jewish Code 70-71)."

40. "If he denies it, he must take an oath, if the Court find some facts that can be believed (Chapter 177)."

LAW POSSESSION OF REAL PROPERTY

CHAPTER 149.

6. "A father taking possession of a field belonging to his daughter or a son taking possession of a field belonging to the mother, the possession is void (L. C. 47)."

CHAPTER 175

LAW OF BORDER NEIGHBOR

39. "If the field was sold for the purpose of paying tax to the Government or for expense for burial, or for the support of a wife and daughters, even if the money was borrowed for these purposes and the field is sold to pay the creditors the border neighbor cannot claim his right of the transaction (L. C. )."

45. "If the field is sold to a woman or a small orphan, the rights of the border neighbor cannot be claimed. The same rule applies if he sold it to a hermaphrodite, because he is a doubt if he is a woman."

CHAPTER 186.

1. "If one takes jewelry from a jeweler to send to his bride, and it was stipulated before, if the bride will be satisfied with them, he will pay for it, if not he will return the same, and pay a small amount for the honor, and an accident happened to the jewelry, if it was on the way to bride, he is liable, but if it happened on its return, he is not liable. If it was stolen or lost, he is liable even if it happened on his return (B. M. 81)."

CHAPTER 188.

2. "The appointment of an agent can be legal, even by a man or a woman, even a married woman, when they are of full age, but cannot be legal by a deaf, dumb, or insane person or minor.

LAW OF BUYING AND SELLING

CHAPTER 210.

1. "If A confirms an article to a strange unborn child even if he is in the womb of a woman, even if he say that he shall confirm it when he will be born, it is not effective. If however, he confirms to his unborn son which is in womb of his wife, even he not stated when he will be born, it is confirmed to him (B. B. 141)."

## LAW POSSESSION OR REAL PROPERTY

### CHAPTER 180.

6. "A father taking possession of a field belonging to his daughter or a son taking possession of a field belonging to the mother, the ceremonies is void (B. 6, 47)."

### CHAPTER 179

## LAW OF HOLDER HOLDBACK

49. "If the field was sold for the purpose of paying tax to the Government or for expense for burial, or for the support of a wife and daughter, even if the money was borrowed for these purposes and the field is sold to pay the creditor the holder daughter cannot claim his right of the transaction (B. 6, )."

46. "If the field is sold to a woman or a small orphan, the rights of the border neighbor cannot be claimed. The same rule applies if he sold it to a homophrolite, because he is a dumb if he is a woman."

### CHAPTER 180.

5. "If one takes lawful from a jeweler to send to his bride, and it was stipulated before, if the bride was no more [illegible] with them, he will pay for it, if not he will return the same, and pay a small amount for the broken, and no accident happened to the jewelry, if it was on the way to bride, he is liable, but if it happened or its reason, he is not liable. If it was stolen or lost, he is liable upon if it happened on his return (B. B. 81)."

### CHAPTER 180.

2. "The appointment of an agent can be legal, even by a son of a woman, even a partial woman, when they are of full age, but cannot be legal by a deaf, dumb, or insane person or minor."

## LAW OF DIVINE AND SKILLED

### CHAPTER 181.

1. "If A confirms an article to a strange unborn child even if he is in the womb of a woman, even if he say that he shall confirm it when he will do form, it is not effective. If however, he confirms to his own form, it is confirmed to him (B. B. 141)."

## BUSINESS FRAUD

### CHAPTER 228.

3. "It is forbidden to defraud a wife because her tears flow easily (B. M. 58)."

### CHAPTER 235.

1. "A minor, under six years old, if he confirm an article to another it is invalid; and from six years until he becomes of age, if he is clever in business, the transaction in personal property, either buying or selling or gift, either in a smaller or a bigger amount, it is valid because it is a enactment of the Rabbinical; he shall be able to make a living. But by a transaction of real property, either the same was inherit from his father, or he received a gift, or the guardian bought for him, he cannot confirm to other until he becomes 13 years by a case of male and 12 years by case of female and shall have hair under the arms. And even he give it as a gift at the time he was of died bed such field which was given to him as a gift and he is clever in business the transaction is invalid (Gittin 59)."

7. "The same rule applies if a minor bought personal property and made a settlement with a form of agreement and hire the place which the personal property lies in, the settlement is invalid until he must remove the same bargain because the settlement of hiring the place is under the law of agency and a minor cannot appoint a agent but a minor female which the law of her yard is consider as her hand she can confirm the personal property from others, with the settlement of hiring the place or form of agreement (B. M. 10)."

9. "When a minor becomes of age, 13 years and a female after 12 years and they have hair under the arms, even they not so smart in business the transaction in personal property is valid but by real property it is invalid until he must be smart in business after he becomes his age but the court has the right to sell the real property to pay the debts of the father (B. B. 160; Ramo)."

## LAW OF GIFT

### CHAPTER 242.

8. "It happens A decides to marry a certain woman, and the latter says she will not marry him unless he writes his whole fortune on her name, and the older son hears of this conversation, and made a protest, because he left nothing fortune to him, A commands to the witness, that they should hide themselves, and write the whole fortune to the son, and afterward he writes his whole fortune to the woman and he marries her, and the case was decided by the sages, that the son's gift is ineffective, because it was in secret, and the woman's gift is also ineffective, because the first secret gift is declared as a notification to the woman's gift (B. B. 40)."

### CHAPTER 243.

5. "The winner, for gift, must be of full age and with the full consent; either a man or woman, even a married woman is entitled to be the winner of the gift; but a married woman, when the gift giver is her husband, she cannot act as agent to win for another, except when she has a part in the same gift (Eruvin 79)."

16. "The yard of a female minor, or her four yards, can act as agent to win for her the gift, but not the yard of a male minor (B. M. 10)."

CHAPTER 246.

7. "If it is a doubt in the language of giving the gift, if the giver's ideas is for a real gift, or as an appointment of guardian, the burden of proof lies upon the receiver (Rasbe)."

8. "This law only applies when A writes to one son, when there are more sons, if however A wrote the entire fortune to one son, when the rest are daughters, or he wrote it to a daughter, when the rest are daughters or sons, or to one of the heirs, when the rest are other heirs, even he did not leave nothing for himself, the gift is effective (B. B. 144)."

9. "It is an opinion when A writes it to a daughter, and the rest are daughters or sons, she is only appointed as guardian(Ramo)."

CHAPTER 247.

1. "One sends, from abroad the sea, articles and commands that it shall be given to his sons and he has sons and daughters, it must be given to both, each one which is possible to used by the sons like books or amunition, it must be given to them, and which can be used by the daughters, namely, dyed silk, dresses, rings it belongs to the daughters, if it is such an article which it can be used by both of them, it belongs to the sons (B. B. 143)."

2. "The same rule applies when one sends articles for the use of his family without specifying to whom it shall be given, and it was such articles which could be used by the sons, it must be given to them, because it is understood that he send it for them, and articles which can be used by the daughters, it belongs to them, if however he has no daughter or has and they are married, it belongs to the wife or to the sons."

3. "It is an opinion that this rule applies only when the giver has no wife, if he has a wife, it is positive that it is sent to her, because the wife is considered in law like his body (Tur, L. C. )."

4. "A sick person commands that his fortune shall be given to his sons and he has only one son and daughter, the whole fortune belongs to the son, and even the daughter has sons, the estate does not belong to them, it is an opinion when it is no sons, and it is a grandson from the son, the estate belongs to him (Tur)."

5. "A commands that his whole fortune shall be given to his son B, but he must give a certain amount for each of his daughters, and one dies, and she left a son he is not bound to give the son of the daughter, because the command was only to the daughter, not to her son (Ramo)."

6. "When A commands my fortune shall belong to B and my son B, is entitled to a half and the son to a half divide it when a husband and wife made a condition that when one of them will die their fortune shall be returned to both relatives they must divide the fortune equally (Ramo)."

CHAPTER 248.

5. "Even the law is if B sold the fortune the same cannot be recovered from the buyers. But it is forbidden to B to sell or to give the

real, to others he only may use the fruit, until he dies, and afterward it belongs to C, and every one who gives advice to B to sell this fortune, is called wicked (B. B. 137)."

9. "B dies and his debtor or his widow wishes to collect from the gift, cannot be collected from it even B made a mortgage, to his wife for her marriage contract she shall collect only from this fortune, it is ineffective because it belongs to C (L. C. )."

13. "If a sick person commands that his whole fortune shall be given to a unmarried woman, and after she dies, it shall be given to B, and the woman marries, and her fortune is transferred to her husband as a dowry B cannot recover the fortune from the husband, because he is considered in the law as a buyer (See Par. 5)."

14. "If however it was given to a married woman when she dies, B may recover from the husband, because when it was given to her she was married, and she won the fortune on condition that after her death it shall belong to B and not to her husband. Therefore if she sold the fortune before she dies to another it belongs to him (Ketuboth 95)."

15. "A commands that his whole fortune shall be given to his mother, and after her death, it shall be given to her heirs, and she has a married daughter, who died before her husband and the grandmother, the husband is not entitled to inherit the fortune, because it belongs to his wife, and she win of its possession only after she died, and such gain which come after her death does not belong to him, but when the daughter left issue, either sons or daughters, it belongs to them, because when it was commanded to the mother and her heirs, it is understood even to the heirs of the heirs (B. B. 125)."

16. "But when A says when the mother dies it shall belong to his daughter from now, then the husband is entitled to inherit the same fortune (L. C. )."

## CHAPTER 250.

### GIFT OF SICK PERSON

23. "R and his wife made a condition, that if he dies before her, she shall become from his estate one-third, and his brother two-thirds, and the deed gift was delivered to the brother, and R becomes sick and commands that from the same two-thirds to give a part as gift to others, and he dies afterwards, and the brother wishes to destroy the will, because it was given to him before his claim is not effective, because R has the right to retract from the first will (Tur)."

## CHAPTER 252.

1. "The gift of a sick person is confirmed to the receiver only after he dies, and no other one can win either in personal or real property only after the giver dies, therefore if it is an obligation of the giver for support of a widow and children, even for the debt of the male children (see Code 4, Chap. 111) and the fortune is insufficient they may collect from the fortune because the obligation began at the time of the dying, and to the receiver is confirm after the death (B. B. 133)."

## CHAPTER 253

3. "If a sick person commands that 200 zuz shall be given to B his son or to my wife, or to my debtor, which it fit for them they are

entitled to receive the 200 zuz except the share of inherited or the amount mentioned in the marriage contract or the debt. If however he says give 200 zuz to my sons instead of his share of the first born, or to my wife for her marriage contract, they are not entitled to both, only to one of them, and they have the right to choose which one is to receive the 200 zuz or the share of the first born, etc. (L. C. 138)."

7. "A sick person bequests 200 zuz to B and he shall marry my daughter, it is considered as two presents. The 200 zuz is the first and the marrying of the daughter is the second gift, therefore B has the right to receive the 200 zuz and refuses to marry the daughter. If however he says B shall marry my daughter and give 200 zuz to him, it is considered like a condition, and if he will marry his daughter, he shall receive the 200 zuz, and if B refuses to marry the daughter, he is not entitled to receive the 200 zuz (Bicho 20)."

11. "When a sick man bequeaths that 400 zuz shall be given to his daughter on her marriage contract, it is a custom in the locality to write a double amount, she is only entitled to 200 zuz and no more because he meant shall be written in the marriage contract 400 zuz but the gift is only 200 zuz (Tur)."

12. "If the sick person says give 200 zuz to my daughter as her dowry she is not entitled to receive the money until she will marry and she will need the money if she dies before, her heirs cannot collect the 200 zuz. If however it was said give to my daughter 200 zuz for the purpose of her dowry, the heirs are bound to give her the 200 zuz at once, and if it becomes decreased or increased, it is on her account, and if she dies before she marries, the money belongs to her heirs (B. B. 104)."

20. "A sick person says when my wife has a boy he shall take 100 zuz and if a girl she shall take 200 zuz, it must be fulfilled according to his will. If she has twins, a boy and a girl, the boy gets 100 zuz and the girl 200 zuz. If she has a hermity he must receive only 100 zuz.

21. "A sick person commands if my wife has a male, he shall receive from my fortune two-thirds, and my brother one-third, and if he has a female, she shall have one-third, and my brother two-thirds, and afterward she has twins, a boy and a girl, the will becomes void, and the estate must be divided according to the Torah Law and all belongs to the son."

22. "Another opinion states regarding this case that the estate must be divided in seven parts, four parts to the son, two parts to the brother, and one part to the daughter."

## THE LAW OF LOSS AND FOUND

### CHAPTER 268.

7. "A female's court yard and her four yards can confirm to her a bargain, however, a male minor cannot confirm to him the four yards and the court yard (B. M. 10)."

### CHAPTER 270.

2. "The articles found by his son or daughter or his wife when they are supported by his table even if they are full age belongs to him. If, however, they are not supported by his table, even the son is a minor, it belongs to them (L. C. )."

entitled to receive the 200 zuz except the share of DISPUTED or the amount mentioned in the marriage contract or the ketubah. If however he says 200 zuz to my sons instead of his share of the first born, or to my wife for her marriage contract, they are not entitled to both, only to one of them, and they have the right to choose which one is to receive the 200 zuz or the share of the first born, etc. (B. B. 139)."

7. "A sick person bequeaths 200 zuz to B and he shall marry my daughter. If he complied on two persons. The 200 zuz is the first and the marrying of the daughter is the second gift, therefore B has the right to receive the 200 zuz and refuses to marry the daughter. If however he says B shall marry my daughter and give 200 zuz to him, it is considered like a condition, and if he will marry his daughter, he shall receive the 200 zuz, and if B refuses to marry the daughter, he is not entitled to receive the 200 zuz (Bloch 80)."

11. "When a sick man bequeaths that 400 zuz shall be given to his daughter on her marriage contract, it is a matter in the liability to write a double amount, she is only entitled to 200 zuz and no more because shall is written in the marriage contract 400 zuz but the wife is only 200 zuz (B. B.)."

12. "If the sick person says give 200 zuz to my daughter as her dowry she is not entitled to receive the money until she will marry and she will need the money if she dies before, for heirs accept either the 200 zuz. If however it was said give to my daughter 200 zuz for the purpose of her dowry, the heirs are bound to give her the 200 zuz at once, and if it becomes destroyed or lessened, it is on her account, and if she [illegible] before she marries, the money returns to the heirs (B. B. 139)."

20. "A sick person says when my wife has a boy he shall take 100 zuz and if a girl she shall take 200 zuz, it must be fulfilled according to his will. If she has twins, a boy and a girl, the boy gets 100 zuz and the girl 200 zuz. If she has a barrel he must receive only 100 zuz.

21. "A sick person commits if my wife has a male, he shall receive five fortuns two-thirds, and my brother one-third, and if he has a female, she shall have one-third, and my brother two-thirds, and afterward she has twins, a boy and a girl, the will become void, and the estate must be divided according to the Torah law and all belongs to the son."

22. "Another opinion states regarding this case that the estate must be divided in seven parts, four parts to the son, two parts to the brother, and one part to the daughter."

## THE LAW OF LOAN AND LOANS

### CHAPTER 29a.

1. "A Israelite's court yard and his four yards can confirm to her a bargain. However, a male must confirm to him the four yards and the court yard (B. M. 10)."

### CHAPTER 30.

2. "The articles found by his son or a debtor to his wife, that they are supposed by his table even if they are full age belongs to him. If, however, they are not supported by his table, open the son is a minor, it belongs to them (B. B. )."

## LAW OF HIRER AND HIS OBLIGATION.

### CHAPTER 308.

1. "If A hires a horse to ride a male he is forbidden to ride a woman on her. If A violates and puts a woman on the horse and the latter becomes damaged, there are two opinions, if he is bound to pay or not. If it is a custom in the locality to charge a higher fare for a woman than for a man then A must pay the difference, if the horse was hired to ride a woman then it is permitted to ride a man (B. M. 79)."

2. "If the animal is hired to ride a woman it is permitted to ride any kind of a woman, even though she is pregnant or with a suckling child (L. c.)."

## LAW OF BORROWER.

### CHAPTER 346.

9. "When A borrows a cow from a married woman from her unguaranteed property and her husband is in service to the borrower or the woman borrows a cow for the use of her unguaranteed property and the owner of the cow is in the service of her husband then it is not considered as owner service because in this property he is only entitled to the use of the fruit and that cannot be considered as like the possession of the ground (L. c. 96)."

21. "The husband in the property of his wife which is unguaranteed by him even though he was neglected and the same becomes lost he is not liable because the wife is in his service (L. c. 76)."

22. "A woman borrowed an article for a certain length of time and afterwards she married, the husband is considered as buyer and not as guardian; therefore if the article was a cow and she died even on account of negligence the husband is not liable although he used it the same certain time, because he is considered as a buyer, and a judgment must be given to the borrower in the name of the woman and when she will be divorced or become a widow the plaintiff will be able to collect from her (L. c.)."

23. "If she notifies her husband that the cow is borrowed, he is liable to pay for it and the husband cannot be free on account of his wife's service because the cow did not belong to her (Tur)."

## SUPPLEMENT TO CODE IV.

### CHAPTER XXXIX.

1. "If one betrothed a woman on condition that she shall not have made vow and afterward it is found that she made a vow, if it is from the kind that she shall not eat meat or not drink wine, not powder herself, not wear ornaments, she does not become betrothed and even a divorce is not necessary (Ketuboth 72). If it is not this kind of vow, even the husband say that he is against this vow, the betrothal take effect. If, however, he say to the woman on condition you shall not have no vow, then the betrothal takes no effect."

2. "If she has made a vow, but she went to the clergyman before the bridegroom was aware of it, and the clergyman absolved her from the vow, then she is betrothed (L. c.74)."

3. "If a man betroths a woman on condition that she shall have no defects and afterward it is found that she has even one defect, like a bad breath, or a wart which is not visible, then she does not become betrothed (L. c)."

ondropicus publishing company, inc.

## LAW OF HIRE AND HIS DEDICATION.

### CHAPTER ONE.

1. "If A hires a horse to ride a mile on it for £100 to ride a woman on her, if A alights and puts a woman on the horse and the latter becomes deranged, there are two opinions, if he is horse — and or no, if it is a crime in the locality to charge a higher fare for a woman than for a man then A must pay the difference, if the horse was hired to ride a woman then it is permitted to ride a man (I. B. 79)."

2. "If the animal is hired to ride a woman it is permitted to ride any kind of a woman, even though she is pregnant or with a suckling child (I. c.)."

## LAW OF PROPERTY.

### CHAPTER ONE.

3. "When A borrows a cow from a married woman from her usufructuary property and her husband is in service to the borrower or the woman borrows a cow for the use of her negro husband, [illegible] the cow is in the use of the cow is in the service of her husband then it is not considered as owner service because is only entitled to the use of the fruit and that cannot be considered as like the possession of the crowned (I. c. 82)."

[illegible] "The husband is the property of his wife which is unappropriated by his own though he can replaced and the same possess lost to is not liable because the wife is in his service (I. c. 76)."

[illegible] "A mean borrowed an article for a certain length of time and afterwards [illegible] borrowed, the husband is considered as buyer and not as [illegible] therefore if the article was a cow and she died even on account of [illegible] the husband is not liable although he took it the same [illegible] because it is considered as a buyer, and a judgment must be given to the borrower in the case of the woman and then she will be divorced or [illegible] either the plaintiff will be able to collect from her (I. c.)."

[illegible] "If she testifies for husband that the cow is borrowed, he is liable to pay for it and the husband cannot be free on account of his wife's service because the cow did not belong to her (Dar)."

## SUPPLEMENT TO BOOK IX.

### CHAPTER XXXIX.

1. "If one borrowed a mean on condition that she could not have [illegible] for it from the time she is found that she would very, if it is [illegible] that she could not not of her time, not proper Normally, not necessary (Bertram 782). If it is not this kind of work, even the husband any that he is against this work, the following told effect. If, however, he say to the woman on condition you shall not have no work from the [illegible] this no effect."

2. "If she has made a vow, but she went to the clergyman before the [illegible] was carry of it, and the clergyman relieved her from the vow, then she is [illegible] (I. c. 91)."

3. "If a man borrows a woman on condition that she shall have no [illegible] and afterwards it is found that she has [illegible], like a bad [illegible], or a work which is not virtuous, then she [illegible] borrowed (I. c.)."

4. "If it was not specified at the time of the betrothal about the defects and it is found that she has the same defects enumerated above, or it is found that she makes a vow which any husband is against, the betrothal is doubtful."

5. "If a man makes a condition with the women that she shall have no defects and she has same, but she went to the doctor and recovers, she is not betrothed (L. c.)."

6. "If, however, the woman makes a condition with the man that he shall have no defects, and he has some and went to a doctor and recovers, the betrothal takes effect, because there is no shame for a man who had defects and recovered from it, but for a woman it is a shame if she had defects, even she recovered afterward."

## CHAPTER XL.

1. "If a man say to a woman, 'You are betrothed to me with this coin after thirty days,' and she receives the money and was satisfied, the betrothal takes effect after the thirty days is expired, even if the money was spent in the meantime (Kidushin 58)."

2. "It is permitted that either the man or the woman may retract from the betrothal within the thirty days. If she retracts she must return the betrothed money, if he retract it is two opinions if the betrothed money must be returned or not (L. c.)."

3. "If before the thirty days expires a second man betroths her at once with coin, then she is betrothed to the second, because until the thirty days elapsed she did not belong to the first one, and when the thirty days expired she is a married woman; therefore, the consideration of the first man cannot be valid, because a married woman cannot be betrothed. (She must return the betroth money to the first one )."

4, "If the second man dies before the expiration of the thirty days, there are two judicial opinions as to whether the first betrothal takes effect or not (L. c.)."

5. "If a man say to a pregnant woman's husband, 'If your wife bears a girl she shall be betrothed to me,' and she bears a girl, this betrothal is not effective, because a man cannot bargain with something that does not exist in the world, but Mamemmides holds that if the woman was so pregnant that her condition was clearly visible, the betrothal can take effect, but he must again betrothal her when she becomes of age (Kidushin 70)."

6. "If a man says to a married woman, 'Take this coin and you will be betrothed to me after your husband divorces you,' or he says to a woman who is his wife's sister, 'You are betrothed to me with the coin after my wife dies,' the betrothal takes no effect, because he is unable to betroth her at once (L. c.62)."

## CHAPTER XLI.

1. "One man can betroth several women at same time and one of them can act as agent to receive the betrothal for all with one coin, but it must not be less than one peruto (one cent U. S.) for each one (Kidushin 50)."

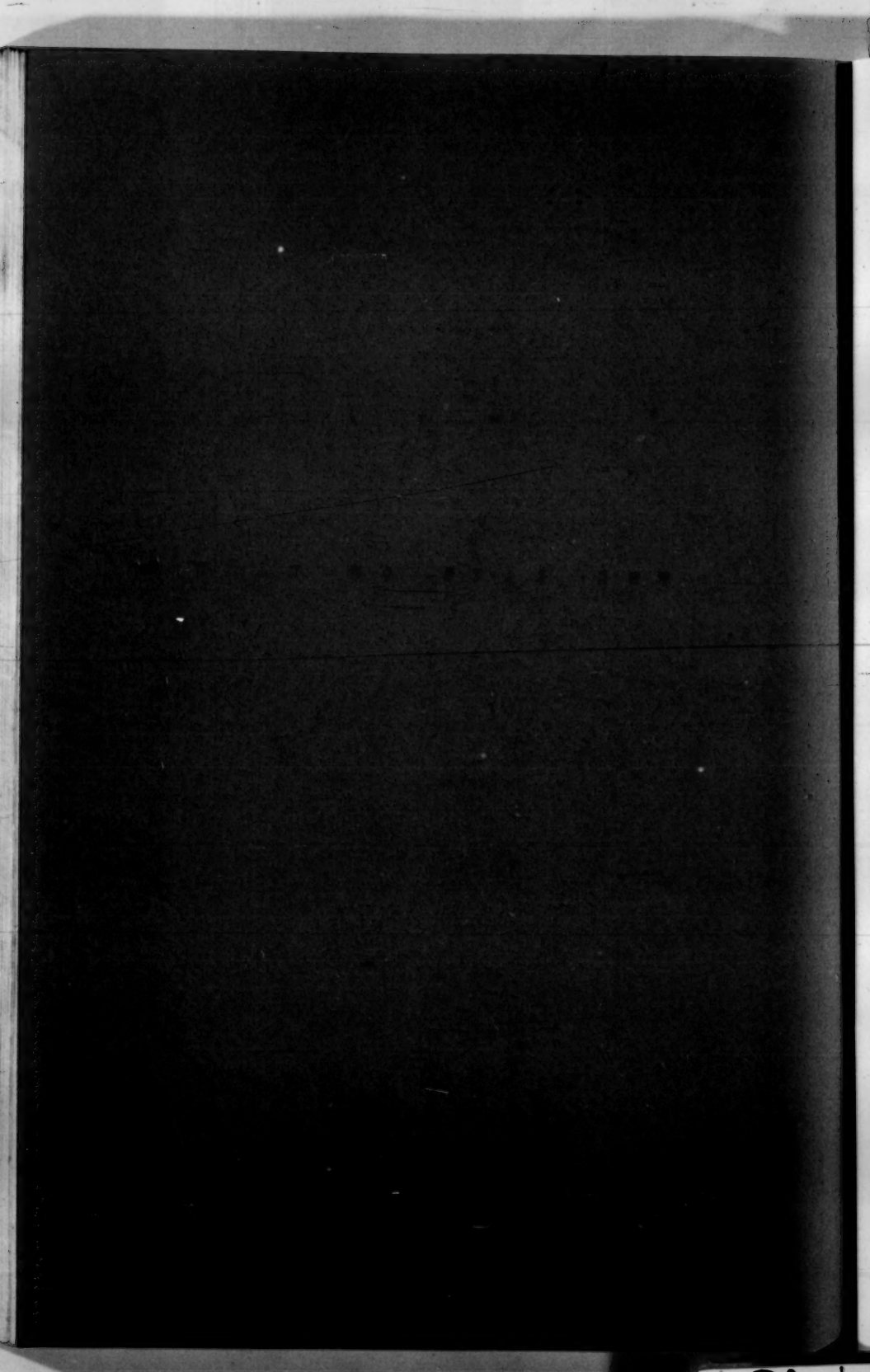
2. "If one man betroths two women at one time and one of them was one of those forbidden to him, for example, the two women were mother and daughter, or two sisters, neither one of them becomes betrothed to him (L. c.)."

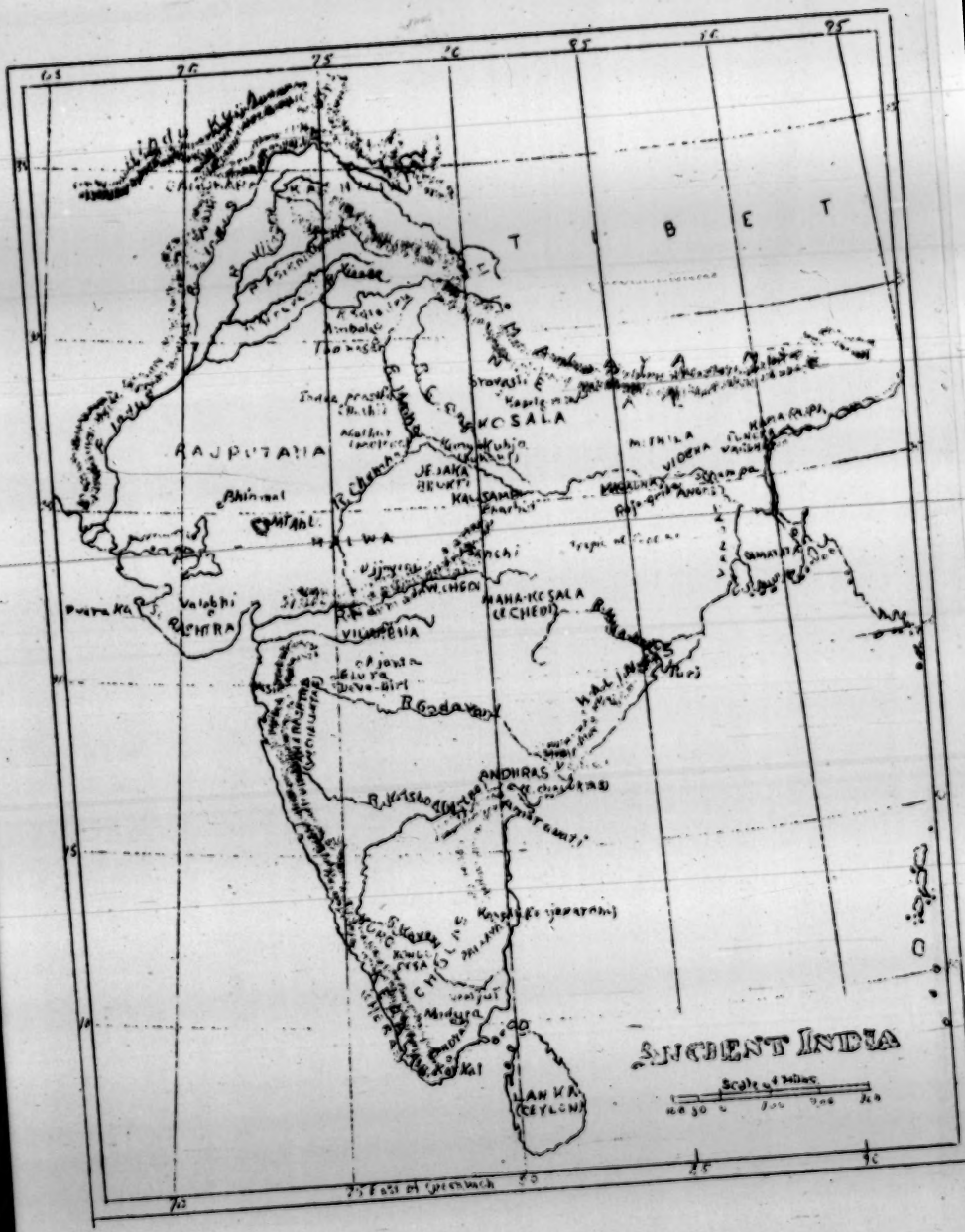
# PART IV

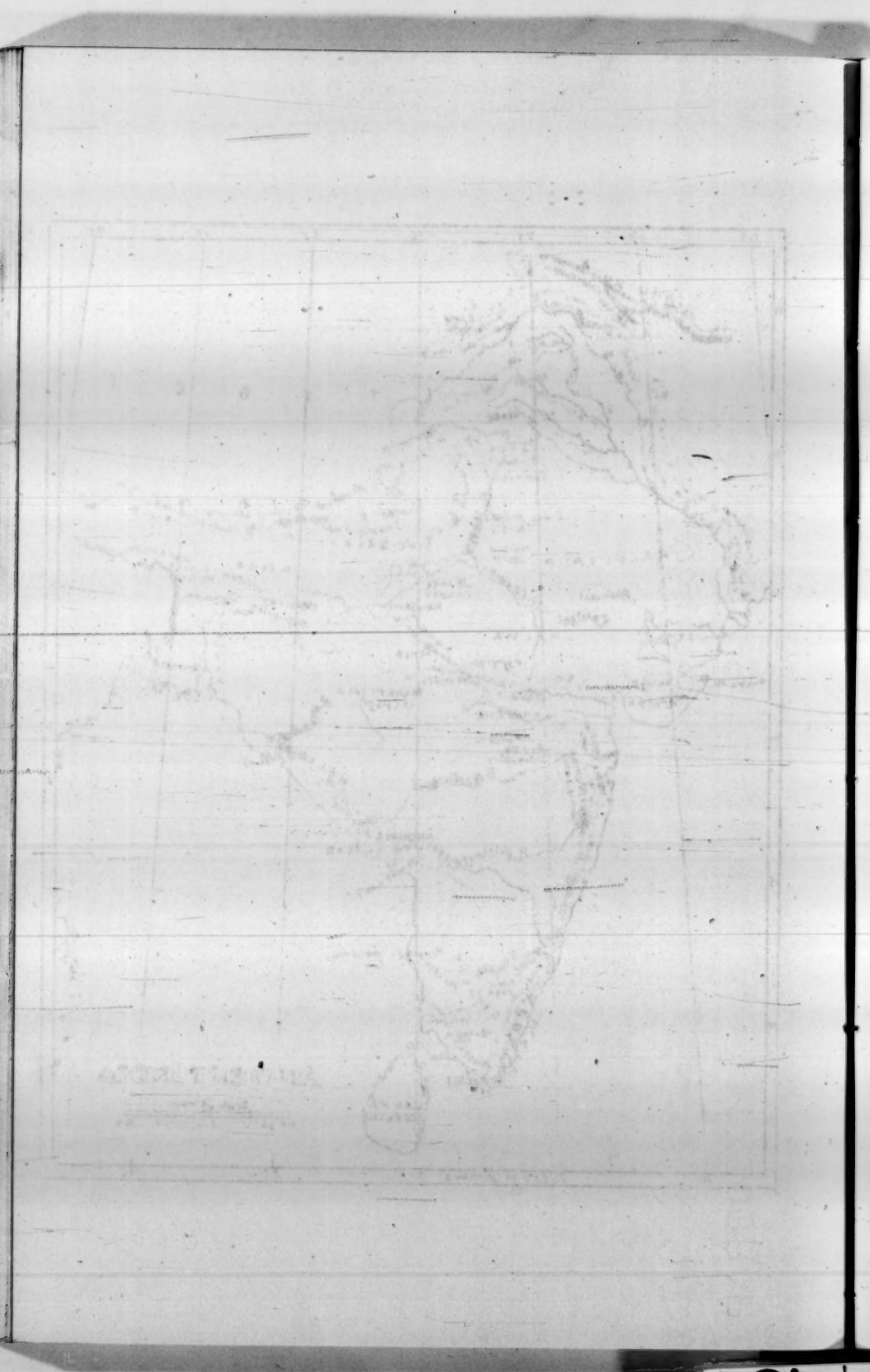
## H I N D U

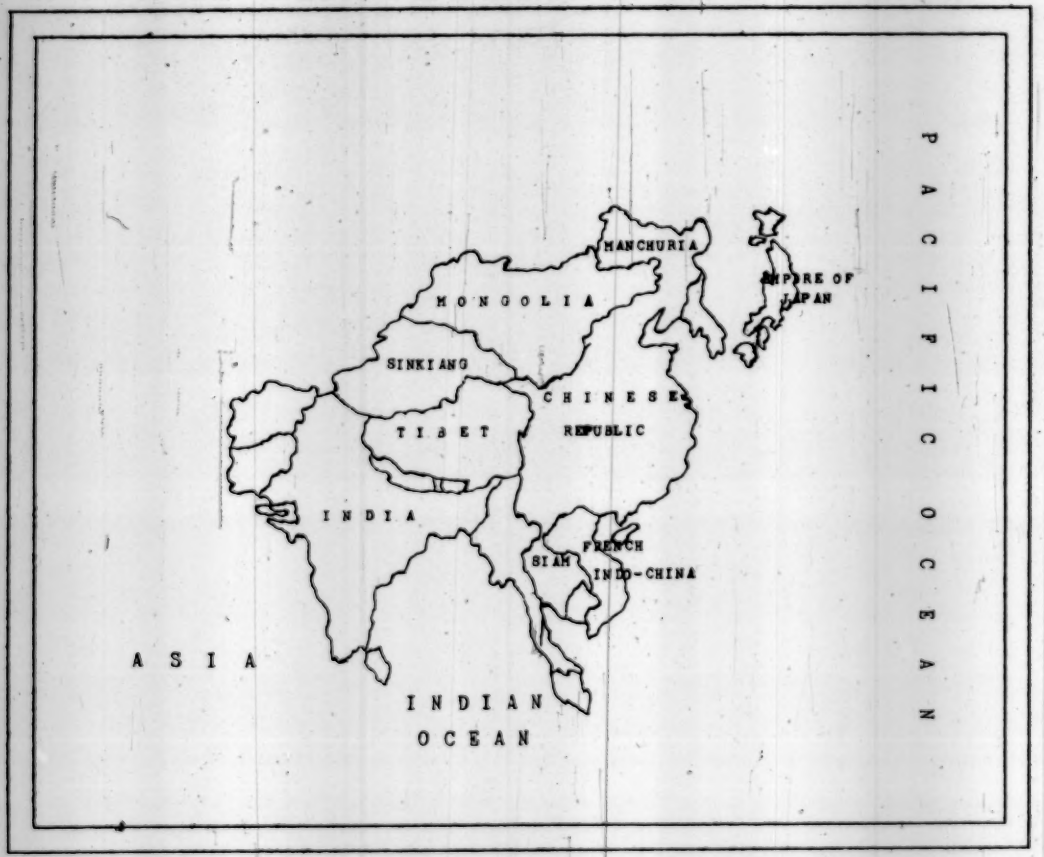
# THE LAWS OF MANU

ndronicus publishing company, inc.




ANCIENT INDIA
TIBET
RAJPUTANA
MALWA
KOSALA
MAHA-KOSALA (CHEDI)
VIDARBHA
ANDHRAS
LANKA (CEYLON)
Bhinmal
Ujjayini
Madura
Scale of Miles




MANCHURIA
EMPIRE OF JAPAN
MONGOLIA
SINKIANG
CHINESE REPUBLIC
TIBET
INDIA
FRENCH INDO-CHINA
SIAM
ASIA
INDIAN OCEAN
PACIFIC OCEAN

PACIFIC OCEAN
INDIAN OCEAN
ASIA
AUSTRALIA
PHILIPPINES
MALAYSIA
INDONESIA

GANESA
INDIAN GOD OF WISDOM

andronicus publishing company, inc.

# LAWS OF MANU.

## CHAPTER I.

32. "Dividing his own body, the Lord became half male and half female; with that (female) he produced Virag."

112. "(The law of) marriage and the description of the (various) marriage-rites, the regulations for the great sacrifices and the eternal rule of the funeral sacrifices."

114. "The laws concerning women, (the law) of hermits, (the manner of gaining) final emancipation and (of) renouncing the world, the whole duty of a king and the manner of deciding lawsuits."

115. "The rules for the examination of witnesses, the laws concerning husband and wife, the law of (inheritance and) division, (the law concerning) gambling and the removal of (men nocuous like) thorns."

## CHAPTER II.

6. "The whole Veda is the (first) source of the sacred law, next the tradition and the virtuous conduct of those who know the (Veda further), also the customs of holy men, and (finally) self-satisfaction."

7. "Whatever law has been ordained for any (person) by Manu, that has been fully declared in the Veda; for that (sage was) omniscient."

9. "For that man who obeys the law prescribed in the revealed texts and in the sacred tradition, gains fame in this (world) and after death unsurpassable bliss."

10. "But by Sruti (revelation) is meant the Veda, and by Smriti (tradition) the Institutes of the sacred law; Those two must not be called into question in any matter, since from those two the sacred law shone forth."

12. "The Veda, the sacred tradition, the customs of virtuous men, and one's own pleasure; they declare to be visibly the fourfold means of defining the sacred law."

13. "The knowledge of the sacred law is prescribed for those who are not given to the acquisition of wealth and to the gratification of their desires; to those who seek the knowledge of the sacred law the supreme authority is the revelation (Sruti)."

14. "But when two sacred texts (Sruti) are conflicting, both are held to be law; for both are pronounced by the wise (to be) valid law."

26. "With holy rites, prescribed by the Veda, must the ceremony on conception and other sacraments be performed for twice-born men, which sanctify the body and purify (from sin) in this (life) and after death."

27. "By burnt oblations during (the mother's) pregnancy by the Gatakarman (the ceremony after birth), the Kauda (tonsure), and the Maungibandhana (the tying of the sacred girdle of Munga grass) is the taint, derived from both parents, removed from twice-born men."

33. "The names of women should be easy to pronounce, not imply anything dreadful, possess a plain meaning, be pleasing and auspicious, end in long vowels, and contain a word of benediction."

45. "A Brahmana shall (carry), according to the sacred law, a staff of Bilva or Palasa; a Kshatriya of Vata or Khadira; (and) a Vaisya of Pilu or Udumbara."

46. "The staff of a Brahmana shall be made of such length as to reach the end of his hair; that of a Kshatriya, to reach his forehead; (and) that of a Vaisya, to reach (the tip of his) nose."

47. "Let all the staves be straight, without a blemish, handsome to look at, not likely to terrify men, with their bark perfect, unhurt by fire."

48. "Having taken a staff according to his choice, having worshipped the sun and walked round the fire, turning his right hand towards it, (the student) should beg alms according to the prescribed rule."

49. "An initiated Brahmana should beg, beginning (his request with the word) lady (bhavati); a Kshatriya, placing (the word) lady in the middle, but a Vaisya, placing it at the end (of the formula)."

50. "Let him first beg food of his mother, or of his sister, or of his own maternal aunt, or of (some other) female who will not disgrace him (by a refusal)."

61. "He who knows the sacred law and seeks purity shall always perform the rite of sipping with water neither hot nor frothy, with the (prescribed) tirtha, in a lonely place, and turning to the east or to the north."

62. "A Brahmana is purified by water that reaches his heart, a Kshatriya by water reaching his throat, a Vaisya by water taken into his mouth, (and) a Sudra by water touched with the extremity (of his lips)."

65. "(The ceremony called) Kesanta (clipping the hair) is ordained for a Brahmana in the sixteenth year (from conception); for a Kshatriya, in the twenty-second; and for a Vaisya, two (years) later than that."

66. "This whole series (of ceremonies) must be performed for females (also), in order to sanctify the body at the proper time and in the proper order, but without (the recitation of) sacred texts."

67. "The nuptial ceremony is stated to be the Vedic sacrament for women (and to be equal to the initiation), serving the husband (equivalent to) the residence in (the house to the) teacher, and the household duties (the same) as the (daily) worship of the sacred fire."

68. "Thus has been described the rule for the initiation of the twice-born, which indicates a (new) birth, and sanctifies; learn (now) to what duties they must afterwards apply themselves."

69. "Having performed the (rite of) initiation, the teacher must first instruct the pupil) in (the rules of) personal purification, of conduct, of the fire-worship, and of the twilight devotions."

109. "According to the sacred law the (following) ten (persons, viz.) the teacher's son, one who desires to do service, one who imparts knowledge, one who is intent on fulfilling the law, one who is pure, a person connected by marriage or friendship, one who possesses (mental) ability, one who makes presents of money, one who is honest, and a relative, may be instructed (in the Veda)."

122. "After the (word of) salutation, a Brahmana who greets an elder must pronounce his name, saying, 'I am N.N.'"

123. "To those (persons) who, when a name is pronounced, do not understand (the meaning of) the salutation, a wise man should say, 'It is I;' and (he should address) in the same manner all women."

126. "He who has been initiated (to perform a Srauta sacrifice) must not be addressed by his name, even though he be a younger man; he who knows the sacred law must use in speaking to such (a man the particle) bhoh and (the pronoun) bhavat (your worship)."

129. "But a female who is the wife of another man, and not a blood-relation, he must say, 'Lady (bhavati)' or 'Beloved sister' !"

130. "To his maternal and paternal uncles, fathers-in-law, officiating priests, (and other) venerable persons, he must say, 'I am N.N.,' and rise (to meet them), even though they be younger (than himself)."

131. "A maternal aunt, the wife of a maternal uncle, a mother-in-law, and a paternal aunt must be honoured like the wife of one's teacher; they are equal to the wife of one's teacher."

132. "(The feet of the) wife of one's brother, if she be of the same caste (varnal), must be clasped every day; but (the feet of) wives of (other) paternal and maternal relatives need only be embraced on one's return from a journey."

133. "Towards a sister of one's father and of one's mother, and towards one's own elder sister, one must behave as towards one's mother; (but) the mother is more venerable than they."

138. "Way must be made for a man in a carriage, for one who is about ninety years old, for one diseased, for the carrier of a burden, for a woman, for a Snataka, for the king, and for a bridegroom."

144. "That (man) who truthfully fills both his ears with the Veda, (the pupil) shall consider as his father and mother; he must never offend him."

145. "The teacher (akarya) is ten times more venerable than a sub-teacher (upadhyaya), the father a hundred times more than the teacher, but the mother a thousand times more than the father."

147. "Let him consider that (he received) a (mere animal) existence, when his parents begat him through mutual affection, and when he was born from the womb (of his mother)."

175. "But a student who resides with his teacher must observe the following restrictive rules, duly controlling all his organs, in order to increase his spiritual merit."

177. "Let him abstain from honey, meat, perfumes, garlands, substances (used for) flavouring (food), women, all substances turned acid, and from doing injury to living creatures."

179. "From gambling, idle disputes, backbiting, and lying, from looking at and touching women, and from hurting others."

184. "Let him not beg from the relatives of his teacher, nor from his own or his mother's blood relations; but if there are no houses belonging to strangers, let him go to one of those named above, taking the last-named first."

Lexington publishing company inc.

130. "Alter the (word of) salutation, a Brahmin who treats an elder must pronounce his name, saying, 'I am N.N.'"

132. "To those (persons) who, when a name is pronounced, do not understand (the meaning of) the salutation, a wise man should say, 'I am I;' and (he should address) in the same manner all women."

136. "He who has INITIATED (to perform a Srauta sacrifice) must not be addressed by his name, even though he be a teacher sent to the house and (the pupil) absent (your worship)."

139. "But a female who is the wife of another man, and not a blood-relation, he must say, 'Lady (Bhavati)!' as (beloved sister) !"

140. "To his paternal and paternal uncles, fathers-in-law, officiating priests, (and other) venerable persons, he must say, 'I am N.N.,' and rise (to meet them), even though they be younger (than himself)."

141. "A paternal aunt, the wife of a paternal uncle, a mother-in-law, and a paternal aunt must be honoured like the wife of one's teacher; they are equal to the wife of one's mother."

142. "(The feet of the) wife of one's brother, if she be of the same (varna), must be clasped every day; but (the feet of) wives of (other) paternal and maternal relatives need only be embraced on one's return (from a journey)."

143. "Inquire a sister of one's father and of one's mother, and to (one's own elder sister, one must behave as towards one's mother; but) the mother is more venerable than they."

138. "May aunt be made for a man in a certain, for one who is about ninety years old, for one diseased, for the convict of a murder, for a woman, for a Sudra, for the king, and for a bridegroom."

144. "That (man) who truthfully fills both his ears with the Vedas, (the pupil) shall consider as his father and mother; he must never offend him."

148. "The teacher (shaping) is far more venerable than a sacrificial teacher (ritvigya), the father a hundred times more than the teacher, but the mother a thousand times more than the father."

147. "But his preceptor (he-received) a (more original) existence, when his parents begot him through mutual affection, and whose be was from the womb (of his mother)."

148. "But a student who recites with his teacher must observe the following restrictive rule, duly controlling all his organs, in order to increase his spiritual merit."

149. "But him abstain from honey, meat, perfumes, garlands, substances used for (leavening (food), women, all substances turned sour, and from being injury to living creatures."

150. "From sanding, lying dispirit, deceitful, and lying, from looking at and touching women, and from hurting others."

154. "But him not beg from the relatives of his teacher, nor from his own or his mother's blood relations; but if there are no dwarfs relations to attend, let him go to one of those named above, taking the last named first."

202. "He must not serve the (teacher by the intervention of another) while he himself stands aloof, nor when he (himself) is angry, nor when a woman is near, if he is seated in a carriage or on a (raised) seat, he must descend and afterwards salute his (teacher)."

207. "Towards his betters let him always behave as towards his teacher, likewise towards sons of his teacher, born by wives of equal caste, and towards the teacher's relatives both on the side of the father and of the mother."

210. "The wives of the teacher, who belongs to the same caste, must be treated as respectfully as the teacher; but those who belong to a different caste, must be honoured by rising and salutation."

211. "Let him not perform for a wife of his teacher (the offices of) anointing her, assisting her in the bath, shampooing her limbs, or arranging her hair."

212. "(A pupil) who is full twenty years old, and knows what is becoming and unbecoming, shall not salute a young wife of his teacher (by clasping) her feet."

213. "It is the nature of women to seduce men in this (world); for that reason the wise are never unguarded in (the company of) females."

214. "For women are able to lead astray in (this) world not only a fool, but even a learned man, and (to make) him a slave of desire and anger."

215. "One should not sit in a lonely place with one's mother, sister, or daughter; for the senses are powerful, and master even a learned man."

216. "But at his pleasure a young student may prostrate himself in the ground before the young wife of a teacher, in accordance with the rule, and say, 'I, N.N., (worship thee, O lady)'."

217. "On returning from a journey he must clasp the feet of his teacher's wife and daily salute her (in the manner just mentioned), remembering the duty of the virtuous."

223. "If a woman or a man of low caste perform anything (leading to) happiness, let him diligently practice it, as well as (any other permitted act) in which his heart finds pleasure."

225. "The teacher, the father, the mother, and an elder brother must not be treated with disrespect, especially by a Brahmana, though one be grievously offended (by them)."

226. "The teacher is the image of Brahman, the father the image of Pragapati (the lord of created beings), the mother of image of the earth, and an (elder) full brother the image of oneself."

227. "That trouble (and pain) which the parents undergo on the birth of (their) children, cannot be compensated even in a hundred years."

230. "For they are declared to be the three worlds, they the three (principal) orders, they the three Vedas, and they the three sacred fires."

231. "The father, forsooth, is stated to be the Garhapatya fire, the mother the Dakshinagni, but the teacher the Ahavaniya fire; this triad of fires is most venerable."

233. "By honouring his mother he gains this (nether) world, by honouring his father the middle sphere, but by obedience to his teacher the world of Brahman."

238. "He who possesses faith may receive pure learning even from a man of lower caste, the highest law even from the lowest, and an excellent wife even from a base family."

240. "Excellent wives, learning, (the knowledge of) the law, (the rules of) purity, good advice, and various arts may be acquired from anybody."

247. "(A perpetual student) must, if his teacher dies, serve his son (provided he be) endowed with good qualities, or his widow, or his Sapinda, in the same manner as the teacher."

## CHAPTER III.

4. "Having bathed, with the permission of his teacher, and performed according to the rule of Samavartana (the rite on returning home), a twice-born man shall marry a wife of equal caste who is endowed with auspicious (bodily) marks."

5. "A (damsel) who is neither a Sapinda on the mother's side, nor belongs to the same family on the father's side, is recommended to twice-born men for wedlock and conjugal union."

6. "In connecting himself with a wife, let him carefully avoid the ten following families, be they ever so great, or rich in kine, horses, sheep, grain, or (other) property."

8. "Let him not marry a maiden (with) reddish (hair), nor one who has a redundant member, nor one who is sickly, nor one either with no hair (on the body) or too much, nor one who is garrulous or has red (eyes)."

9. "Nor one named after a constellation, a tree, or a river, nor one bearing the name of a low caste, or of a mountain, nor one named after a bird, a snake, or a slave, nor one whose name inspires terror."

10. "Let him wed a female free from bodily defects, who has an agreeable name, the (graceful) gait of a Hamsa or of an elephant, a moderate (quantity of) hair on the body and on the head, small teeth, and soft limbs."

11. "But a prudent man should not marry (a maiden) who has no brother, nor one whose father is not know, through fear lest (in the former case she be made) an appointed daughter (and in the latter) lest (he should commit sin)."

12. "For the first marriage of twice-born men (wives) of equal caste are recommended; but for those who through desire proceed (to marry again) the following females, (chosen) according to the (direct) order (of the castes), are most approved."

13. "It is declared that a Sudra woman alone (can be) the wife of a Sudra, she and one of his own caste (the wives) of a Vaisya, those two and one of his own caste (the wives) of a Kshatriya, those three and one of his own caste (the wives) of a Brahmana."

14. "A Sudra woman is not mentioned even in any (ancient) story as the (first) wife of a Brahmana or of a Kshatriya, though they lived in the (greatest) distress."

CHAPTER III.

6. "Having betided, with the permission of the teacher, and pure-
formed according to the rule of Sumerkeian (the rite of returning home),
a bride-cake and shall marry a wife of equal caste who is endowed with
auspicious (lucky) marks."

8. "A (damsel) who is neither a Sapinda on the mother's side, nor
belongs to the same family on the father's side, is recommended in bride-
hood for men of medium and original males."

9. "In connecting himself with a wife, one who is desirous of pros-
perous family, should carefully avoid the following females, viz. one who
is without brothers, or (whose) parents."

8. "Let him not marry a damsel (with) reddish (hair), nor one who
has a redundant member, nor one who is sickly, nor one either with or
hair (on the body) or too much, nor one who is quarrelsome or has red
eyes)."

9. "Nor one named after a constellation, a tree, or a river, nor
one bearing the name of a low caste, or of a mountain, nor one named
after a bird, a snake, or a slave, nor one whose name inspires terror."

10. "Let him not a female free from faulty defects, who has an
agreeable name, the gracefulness gait of a swan or of an elephant, a
moderate quantity of hair on the body and on the head, small teeth,
and soft limbs."

11. "But a prudent man should not marry (a maiden) who has a brother,
for one whose father is not known, through fear lest (in the former case
she be made) an appointed daughter (and in the latter) lest (he should
commit sin)."

12. "For the first marriage of twice-born men (wives) of equal
caste are recommended; but for those who through desire proceed (to marry
again) the following females, (chosen) according to the (direct) order
(of the castes), are most approved."

13. "It is declared that a Sudra woman alone (can be) the wife of
a Sudra, she and one of his own caste (the wives) of a Vaisya, these two
and one of his own caste (the wives) of a Kshatriya, those three and
of his own caste (the wives) of a Brahmana."

14. "A Sudra woman is not mentioned even in any (ancient) story as
the (first) wife of a Brahmana or of a Kshatriya, though they lived in
the (greatest) distress."

15. "Twice-born men who, in their folly, wed wives of the low (Sudra) caste, soon degrade their families and their children to the state of Sudra."

16. "According to Atri and to (Gautama) the son of Utathya, he who weds a Sudra woman becomes an outcast, according to Saunaka on the birth of a son, and according to Bhrigu he who has (male) offspring from a (Sudra female, alone)."

17. "A Brahmana who takes a Sudra wife to his bed, will (after death) sink into hell; if he begets a child by her, he will lose the rank of a Brahmana."

18. "The manes and the gods will not eat the (offerings) of that man who performs the rites in honour of the gods, of the manes, and of guests chiefly with a (Sudra wife's) assistance, and such (a man) will not go to heaven."

19. "For him who drinks the moisture of a Sudra's lips, who is tainted by her breath, and who begets a son on her, no expiation is prescribed."

20. "Now listen to (the) brief (description of) the following eight marriage-rites used by the four castes (varna) which partly secure benefits and partly produce evil both in this life and after death."

21. "(They are) the rite of Brahman (Brahma), that of the gods (Daiva), that of the Rishis (Arsha), that of Pragapati (Pragapatya), that of the Asuras (Asura), that of the Gandharvas (Gandharva), that of the Rakshasas (Rakshasa), and that of the Pisakas (Paisaka)."

22. "Which is lawful for each caste (varna) and which are the virtues or faults of each (rite), all this I will declare to you, as well as their good and evil results with respect to the offspring."

23. "One may know that the first six according to the order (followed above) are lawful for a Brahmana, the four last for a Kshatriya, and the same four, excepting the Rakshasa rite, for a Vaisya and a Sudra."

24. "The sages state that the first four are approved (in the case) of a Brahmana, one, the Rakshasa (rite in the case of a Kshatriya, and the Asura (marriage in that) of a Vaisya and of a Sudra."

25. "But in these (institutes of the sacred law) three of the five (last) are declared to be lawful and two unlawful; the Paisaka and the Asura (rites) must never be used."

26. "For Kshatriyas those before-mentioned two rites, the Gandharva and the Rakshasa, whether separate or mixed, are permitted by the sacred tradition."

27. "The gift of a daughter, after decking her (with costly garments) and honouring (her by presents of jewels), to a man learned in the Veda and of good conduct, whom (the father) himself invites, is called the Brahma rite."

28. "The gift of a daughter who has been decked with ornaments, to a priest who duly officiates at a sacrifice, during the course of its performance, they call the Daiva rite."

29. "When (the father) gives away his daughter according to the rule, after receiving from the bridegroom, for (the fulfilment of) the sacred law, a cow and a bull or two pairs, that is named the Arsha rite."

motilal banarsidass publishing company inc.

30. "The gift of a daughter (by her father after he has addressed (the couple) with the text, 'May both of you perform together your duties,' and has shown honour (to the bridegroom), is called in the Smriti the Pragapatya rite."

31. "When (the bridegroom) receives a maiden, after having given as much wealth as he can afford, to the kinsmen and to the bride herself, according to his own will, that is called the Asura rite."

32. "The voluntary union of a maiden and her lover one must know (to be) the Gandharva rite, which springs from desire and has sexual intercourse for its purpose."

33. "The forcible abduction of a maiden from her home, while she cries out and weeps, after (her kinsmen) have been slain or wounded and (their houses) broken open, is called the Rakshasa rite."

34. "When (a man) by stealth seduces a girl who is sleeping, intoxicated, or disordered in intellect, that is the eighth, the most base and sinful rite of the Pisakas."

35. "The gift of daughters among Brahmanas is most approved, (if it is preceded) by (a libation of) water; but in the case of other castes (it may be performed) by (the expression of) mutual consent."

37. "The son of a wife wedded according to the Brahma rite, if he performs meritorious acts, liberates from sin ten ancestors, ten descendants and himself as the twenty-first."

38. "The son born of a wife, wedded according to the Daiva rite, likewise (saves) seven ancestors and seven descendants, the son of a wife married by the Arsha rite three (in the ascending and descending lines), and the son of a wife married by the rite of Ka (Pragapati) six (in either line)."

39. "From the four marriages, (enumerated) successively, which begin with the Brahma rite spring sons, radiant with knowledge of the Veda and honoured by the Sishtas (good men)."

40. "Endowed with the qualities of beauty and goodness, possessing wealth and fame, obtaining as many enjoyments as they desire and being most righteous, they will live a hundred years."

41. "But from the remaining (four) blamable marriages spring sons who are cruel and speakers of untruth, who hate the Veda and the sacred law."

42. "In the blameless marriages blameless children are born to men, in blamable (marriages) blamable (offspring); one should therefore avoid the blamable (forms of marriage)."

43. "The ceremony of joining the hands is prescribed for (marriages with) women of equal caste (varna); not of a different caste (varna)."

44. "On marrying a man of a higher caste a Kshatriya bride must take hold of an arrow, a Vaisya bride of a goad and a Sudra female of the hem of the (bridegroom's) garment."

45. "Let (the husband) approach his wife in due season, being constantly satisfied with her (alone); he may also, being intent on pleasing her, approach her with a desire for conjugal union (on any day) excepting the Parvans."

35. "The gift of a daughter (by her father after he has adopted
the couple) with the rite, 'May both of you perform together your duties,'
and has shown honour (to the bridegroom), is called in the Gaitis ti,
Prajapatya rite."

36. "When [the bridegroom] receives a maiden, after having given as
much wealth as he can afford, to the kinsmen and to the bride herself,
according to his own will, that is called the Asura rite."

37. "The voluntary union of a maiden and her lover one must know
(to be) the Gandharva rite, which arises from desire and has sexual inter-
course for its purpose."

38. "The forcible abduction of a maiden from her home, while she,
crying out and weeping, after (her kinsmen) have been slain or wounded and
(their houses) broken open, is called the Rakshasa rite."

39. "When (a man) by stealth seduces a girl who is sleeping, intoxi-
cated, or disordered in intellect, that is the eighth, the most base and
sinful rite of the Pisachas."

40. "The rite of Bhojyaya among Prabhuna is most approved, (if it
is preceded) by (a libation of) water but in the case of other castes
(it may be preceded) by (the expression of) *svadhā vaushat*."

41. "The son of a wife wedded according to the Brahma rite, if he
performs meritorious acts, liberates from sin ten ancestors, ten descen-
dants and himself as the tenth (?)."

42. "The son born of a wife, wedded according to the Daiva rite,
liberates (seven) seven ancestors and seven descendants, the son of a wife
married by the Arsha rite (in the nuptial and dancing line),
and the son of a wife married by the rite of the Prajapati (in other
line)."

43. "From the four marriages, (commencing successively with Arsha
with the Brahma rite) spring sons, radiant with knowledge of the Vedas and
honoured by the Brahmans (good men)."

44. "Endowed with the qualities of family and goodness, possessing
wealth and fame, obtaining as many enjoyments as they desire and living
most righteous, they will live a hundred years."

45. "Not from the remaining (four) Blamable marriages spring sons
who are proud and speakers of truth, who hate the forbidden and obey
law."

46. "In the blameless marriages children are born to men,
in blamable (marriages) blamable (offspring); one should therefore avoid
the blamable (form of marriage)."

47. "The ceremony of joining the hands is prescribed for (marriages
with) women of equal caste (varna); not of a different caste (varna)."

48. "A martyred man of a higher caste a Kshatriya bride must
take hold of an arrow, a Vaisya bride of a goad and a Sudra female of the
fringe of the (bridegroom's) garment."

49. "But (the husband) approach his wife in due season, being ori-
ginally satisfied with her (alone); to any also, being intent on pleasing
her, approach her with a desire for conjugal union (on any day) excepting
the fourth."

46. "Sixteen (days and) nights (in each month), including four days which differ from the rest and are censured by the virtuous, (are called) the natural season of women."

47. "But among these the first four, the eleventh and the thirteenth are (declared to be) forbidden; the remaining nights are recommended."

48. "On the even nights sons are conceived and daughters on the uneven ones; hence a man who desires to have sons should approach his wife in due season on the even (nights)."

49. "A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female; if (both are) equal, a hermaphrodite or a boy and a girl; if (both are) weak or deficient in quantity, a failure of conception (results)."

50. "He who avoids women on the six forbidden nights and on eight others, is (equal in chastity to) a student, in whichever order he may live."

51. "No father who knows (the law) must take even the smallest gratuity for his daughter; for a man who, through avarice, takes a gratuity, is a seller of his offspring."

52. "But those (male) relations who, in their folly, live on the separate property of women, (e.g. appropriate) the beasts of burden, carriages, and clothes of women, commit sin and will sink into hell."

53. "Some call the cow and the bull (given) at an Arsha wedding 'a gratuity'; (but) that is wrong, since (the acceptance of) a fee, be it small or great, is a sale (of the daughter)."

54. "When the relatives do not appropriate (for their use) the gratuity (given), it is not a sale; (in that case) the (gift) is only a token of respect and of kindness towards the maidens."

55. "Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law, who desires (their own) welfare."

56. "Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields rewards."

57. "Where the female relations live in grief, the family soon wholly perishes; but that family where they are not unhappy ever prospers."

58. "The houses on which female relations, not being duly honoured, pronounce a curse, perish completely, as if destroyed by magic."

59. "Hence men who seek (their own) welfare, should always honour women on holidays and festivals with (gifts of) ornaments, clothes, and (dainty) food."

60. "In that family, where the husband is pleased with his wife, and the wife with her husband, happiness will assuredly be lasting."

61. "For if the wife is not radiant with beauty, she will not attract her husband; but if she has no attractions for him no children will be born."

62. "If the wife is radiant with beauty, the whole house is bright; but if she is destitute of beauty, all will appear dismal."

46. "Sixteen (days and) nights (in each month), including four days which differ from the rest and are censured by the virtuous, (are called) the natural (abode) of women."

47. "But among these the first four, the eleventh and the thirteenth are (declared to be) forbidden; the remaining eights are recommended."

48. "On the even eights sons are conceived and daughters on the uneven ones; hence a man who desires to have sons should approach his wife in the season on the even (nights)."

49. "A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female; if (both are) equal, a hermaphrodite or a boy and a girl; if (both are) weak or deficient in quantity, a failure of conception (results)."

50. "He who avoids women on the six forbidden nights and on eight others, is (equal in chastity to) a student, is wholly order he may live."

51. "He (other who knows (the law) must take even the smallest property for his daughter; for a man who, through avarice, takes a gratuity, is a seller of his offspring."

52. "But those (male) relations who, in their folly, live on the separate property of women, (e.g. appropriate) the fourth of burden, carriage, and clothes of women, commit sin and will sink into hell."

53. "Some call the son and the heir (given) at an Arsha wedding a gratuity'; (but) that is wrong, since (the acceptance of) a fee, be it small or great, is a sale (of the daughter)."

54. "When the relatives do not appropriate (for their use) the gratuity (given), it is not a sale; (in that case) the (gift) is only a token of respect and of kindness towards the maidens."

55. "Women must be honoured and adorned by their fathers, brothers, husbands, and brother-in-law, who desire (their own) welfare."

56. "Where women are honoured, there the gods are pleased; but where they are not honoured, no sacred rite yields rewards."

57. "Where the female relatives live in grief, the family soon wholly perishes; but that family where they are not unhappy ever prospers."

58. "The houses on which female relations, not being duly honoured, pronounce a curse, perish completely, as if destroyed by magic."

59. "Hence men who (their own) welfare, should always honour women on holidays and festivals with (gifts of) ornaments, clothes, and (dainty) food."

60. "In that family, where the husband is pleased with his wife, and the wife with her husband, happiness will assuredly be lasting."

61. "If the wife is not radiant with beauty, the wife will not attract her husband; but if she has no attractions for him no children will be born."

62. "If the wife is radiant with beauty, the whole house is bright; but if she is destitute of beauty, all will appear ilsome."

63. "By low marriages, by omitting (the performance of) sacred rites, by neglecting the study of the Veda, and by irreverence towards Brahmanas, (great) families sink low."

64. "By (Practicing) handicrafts, by pecuniary transactions, by (begetting) children on Sudra, females only, by (trading in) cows, horses, and carriages, by (the pursuit of) agriculture and by taking service under a king."

103. "One must not consider as a guest a Brahmana who dwells in the same village, nor one who seeks his livelihood by social intercourse, even though he has come to a house where (there is) a wife, and where sacred fires (are kept)."

113. "Even to others, personal friends and so forth who have come to his house out of affection, he may give food, garnished (with seasoning) according to his ability, (at the same time) with his wife."

114. "Without hesitation he may give food, even before his guests, to the following persons, (viz.) to newly-married women, to infants, to the sick, and to pregnant women."

116. "After the Brahmanas, the kinsmen, and the servants have dined, the householder and his wife may afterwards eat what remains."

121. "But the wife shall offer in the evening (a portion) of the dressed food as a Bali-oblation, without (the recitation of) sacred formulas; for that (rite which is called the) Vaisvadeva is prescribed both for the morning and the evening."

147. "This is the chief rule (to be followed) in offering sacrifices to the gods and manes; know that the virtuous always observe the following subsidiary rule."

148. "One may also entertain (on such occasions) one's maternal grandfather, a maternal uncle, a sister's son, a father-in-law, one's teacher, a daughter's son, a daughter's husband, a cognate kinsman, one's own officiating priest or a man for whom one offers a sacrifice."

155. "An actor or singer, one who has broken the vow of studentship, one whose (only or first) wife is a Sudra female, the son of a remarried woman, a one-eyed man, and he in whose house a paramour of his wife (resides)."

156. "He who teaches for a stipulated fee and he who is taught on that condition, he who instructs Sudra pupils and he whose teacher is a Sudra, he who speaks rudely, the son of an adulteress, and the son of a widow."

157. "He who forsakes his mother, his father, or a teacher without a (sufficient) reason, he who has contracted an alliance with outcasts either through the Veda or through a marriage."

158. "An incendiary, a prisoner, he who eats the food given by the son of an adulteress, a seller of Soma, he who undertakes voyages by sea, a bard, an oil-man, a suborner to perjury."

160. "A maker of bows and of arrows, he who lasciviously dallies with a brother's widow, the betrayer of a friend, one who subsists by gambling, he who learns (the Veda) from his son."

164. "A breeder of sporting-dogs, a falconer, one who defiles maidens, he who delights in injuring living creatures, he who gains his subsistence from Sudras, and he who offers sacrifices to the Ganas."

48. "By low marriages, by omitting (the performance of) austere
[illegible], by neglecting the study of the Vedas, and by irreverence towards
Brahmans, (great) foetlims sink low."

49. "By (Pseudo-lac) Traditions, by pecuniary transactions, by
(begetting) children on Sudra, Taurine cows, by (trading in) cows, Jackals,
and carriages, by (the pursuit of) agriculture and by taking service under
a king."

[illegible]. "One must not consider as a friend a Brahmana who dwells in the
same village, nor one who does his livelihood by social intercourse, one
though he has come to a house where (there is) a wife, and where sacred
fires (are kept)."

[illegible]. "Even to others, personal friends and so forth who have come to
his house out of affection, he may give food, furnished (with sustenance)
according to his ability, (at the same time) with his wife."

114. "Without hesitation he may give food, after before his guests,
to the following persons, (viz.) to newly-married ones, to infants, to
the sick, and to pregnant women."

115. "After the Brahmana, the Kshatra, and the Vaisyas have dined,
the householder and his wife may afterwards eat what remains."

121. "But the wife shall offer in the evening (a portion) of the
dressed food as a Bali-oblation, without (the recitation of) sacred formulas for that rite which is called the Vaisvadeva is prescribed both
for the morning and the evening."

147. "This is the ideal rule (to be followed) in offering sacrifice
to the gods and manes: know that the virtuous always observe the following
subsidiary rule."

148. "One may also entertain (as sacrificial guests) one's paternal grandfather, a maternal uncle, a elder's son, a father-in-law, one's teacher,
a daughter's son, a daughter's husband, a separate kinsman, one's own officiating priest or a man for whom one offers a sacrifice."

[illegible]. "An actor or singer, one who has broken the vow of continence,
one whose (only or first) wife is a Sudra female, the son of a remarried
woman, [illegible] (or) one who may be in whose house a remarried woman's son may be
(residing)."

[illegible]. "He who teaches for a stipulated fee and he who is taught on
that condition, he who instructs Sudra pupils and he whose teacher is a
Sudra, he who speaks rudely, the son of an adulteress, and the son of a
widow."

[illegible]. "He who forsakes his mother-like father, or a teacher without
a (sufficient) reason, he who has contracted an alliance with outcasts
either through the Vedas or through a marriage."

[illegible]. "An incendiary, a prisoner, he who eats the food given by the
son of an adulteress, a seller of Soma, he who undertakes voyages by sea,
a hunt, an oil-man, a mercenary to perform."

[illegible]. "A maker of rope and of arrows, he who incestuously defiles
with a brother's widow, the destroyer of a fetus, one who violates by
cunning, he who learns (the Vedas) from his son."

[illegible]. "A breaker of sporting-dogs, a falconer, one who defiles maidens,
he who delights in injuring living creatures, he who gains his maintenance
from Sudras, and he who performs sacrifices in the manes."

166. "A shepherd, a keeper of buffaloes, the husband of a remarried woman, and a carrier of dead bodies, (all these) must be carefully avoided."

171. "He must be considered as a Parivettri who marries or begins the performance of the Agnihotra before his elder brother, but the latter as a Parivitti."

172. "The elder brother who marries after the younger, the younger brother who marries before the elder, the female with whom such a marriage is contracted, he who gives her away, and the sacrificing priest, as the fifth, all fall into hell."

173. "He who lasciviously dallies with the widow of a deceased brother, though she be appointed (to bear a child by him) in accordance with the sacred law, must be known to be a Didhishupati."

174. "Two (kinds of) sons, a Kunda and a Golaka, are born by wives of other men; (he who is born) while the husband lives, will be a Kunda, and (he who is begotten) after the husband's death, a Golaka."

175. "But those two creatures, who are born of wives of other men, cause to the giver the loss (of the rewards), both in this life and after death, for the food sacred to gods or manes which has been given (to them)."

181. "What has been given to a Brahmana who lives by trade that is not (useful) in this world and the next, and (a present) to a Brahmana born of a remarried woman (resembles) an oblation thrown into ashes."

185. "A trinakiketa, one who keeps five sacred fires, a Trisuparna, one who is versed in the six Angas, the son of a woman married according to the Brahma rite, one who sings the Gyeshthasaman."

191. "But he who, being invited to a Sraddha, dallies with a Sudra woman, takes upon himself all the sins which the giver (of the feast) committed."

234. "Let him eagerly entertain at a funeral sacrifice a daughter's son, though he be a student, and let him place a Nepal blanket on the seat (of each guest), scattering sesamum grains on the ground."

235. "There are three means of sanctification, (to be used) at a Sraddha, a daughter's son, a Nepal blanket, and sesamum grains; and they recommend three (other things) for it, cleanliness, suppression of anger, and absence of haste."

239. "A Kandala, a village pig, a cock, a dog, a menstruating woman, and a eunuch must not look at the Brahmanas while they eat."

244. "Let him mix all the kinds of food together, sprinkle them with water and put them, scattering them (on Kusa grass), down on the ground in front of (his guests), when they have finished their meal."

245. "The remnant (in the dishes), and the portion scattered on Kusa grass, shall be the share of deceased (children) who received not the sacrament (of cremation) and of those who (unjustly) forsook noble wives."

250. "If the partaker of a Sraddha (dinner) enters on the same day the bed of a Sudra female, the manes of his (ancestors) will lie during that in her ordure."

166. "A shepherd, a keeper of buffaloes, the husband of a Smartrist woman, and a carrier of dead bodies, (all these) must be carefully avoided."

167. "He must be considered as a Smartrist who carries on bodies for the performance of the Agnihotra before his elder brother, but (he) is not a Smartrist."

168. "The elder brother who marries after the younger, his younger brother marries before the elder, the female with whom such a marriage is contracted, he who gives her away, and the sacrificing priest, all (of them) fall into hell."

169. "He who lustfully dallies with the wife of a deceased brother, though she is appointed (to bear a child) by (a person) in accordance with the sacred law, must be known to be a Chandalaputi."

170. "One (whose) sons, a Rudra and a Gandha, are born (twelve) of other most (he who is born) while the husband lives, will be a Rudra, and (he who is begotten) after the husband's death, a Gandha."

171. "But those two creatures, who are formed when of other men, enter to the diver the love (of the rewards, (and) in this life and after death, for the food eaten by gods or manes which two (of them) give (to them)."

172. "That has been given to a Brahmana who lives by trade; that is not (useful) in this world and the next, and (is) pronounced to a Brahmana (who is) a reserved woman (remarried) as eligible before (her) husband."

173. "A trimalata, one who keeps five sacred fires, a Trimurana, one who is versed in the six Angas, the son of a woman married according to the Gripra rite, one who adopts the Gyeshthasama."

174. "Thus he who, being invited to a Sraddha, failing with a Sudra woman, takes upon himself all the sins which the slayer (of the feast) committed."

175. "But the sacrificial cake at a funeral according to a daughter's son, though he be a student, and (at) his place a Vedal (learner or the) host (or such guest), sanctifying (them) on the ground."

176. "There are three means of sanctification, (to be used) at a funeral, a daughter's son, a Vedal student, strewing ground and the recovered three (fires gifts) for it, cleanliness, suppression of anger, and absence of haste."

177. "A Kshatriya, a wife, a child, a cook, a dog, a sanctifying means, and a sudra must not look on the Brahmana while they eat."

178. "Let him mix all the kinds of food together, sprinkle them with water and put them, scattering them (on Kusa grass), down on the ground in front of (his guests), when they have finished their meal."

179. "The remnant (in the dishes), and the portion scattered on Kusa grass, shall be the share of deceased (children), who received not the sapindi (of cremation) and of those who (wrongly) forsook male slaves."

180. "If the partaker of a Sraddha (dinner) enters on the same day the bed of a Sudra female, the manes of his (ancestors) will lie during that in her uterus."

261. "Some make the offering of the cakes after (the dinner); some cause (them) to be eaten by birds or throw them into fire or into water."

262. "The (sacrificer's) first wife, who is faithful and intent on the worship of the manes, may eat the middle-most cake, (if she be) desirous of bearing a son."

263. "(Thus) she will bring forth a son who will be long-lived, famous, intelligent, rich, the father of numerous offspring, endowed with (the quality of) goodness, and righteous."

264. "Having washed his hands and sipped water, let him prepare (food) for his paternal relations and, after giving it to them with due respect, let him feed his maternal relatives also."

## CHAPTER IV.

1. "Having dwelt with a teacher during the fourth part of (a man's) life, a Brahmana shall live during the second quarter (of his existence) in his house, after he has wedded a wife."

40. "Let him, though mad with desire, not approach his wife when her courses appear; nor let him sleep with her in the same bed."

41. "For the wisdom, the energy, the strength, the sight, and the vitality of a man who approaches a woman covered with menstrual excretions, utterly perish."

42. "If he avoids her, while she is in that condition, his wisdom, energy, strength, sight, and vitality will increase."

43. "Let him not eat in the company of his wife, nor look at her, while she eats, sneezes, yawns, or sits at her ease."

44. "A Brahmana who desires energy must not look at (a woman) who applies collyrium to her eyes, has anointed or uncovered herself or brings forth (a child)."

53. "Let him not blow a fire with his mouth; let him not look at a naked woman; let him not throw any impure substance into the fire, and let him not warm his feet at it."

57. "Let him not sleep alone in a deserted dwelling; let him not wake (a superior) who is sleeping; let him not converse with a menstruating woman; nor let him go to a sacrifice, if he is not chosen (to be officiating priest)."

133. "Let him not show particular attention to an enemy, to the friend of an enemy, to a wicked man, to a thief, or to the wife of another man."

134. "For in this world there is nothing so detrimental to long life as criminal conversation with another man's wife."

141. "Let him not insult those who have redundant limbs or are deficient in limbs, nor those destitute of knowledge, nor very aged men, nor those who have no beauty or wealth, nor those who are of low birth."

162. "Let him never offend the teacher who initiated him, nor him who explained the Veda, nor his father and mother, nor (any other) Guru, nor cows, nor Brahmanas, nor any men performing austerities."

CHAPTER IX.

1. "Having dwelt with a teacher during the fourth part of (a man's) life, a Brahmana shall live during the second quarter (of his existence) in his house, after he has wedded a wife."

40. "Let him, though mad with desire, not approach his wife when her duration appears not favourable, nor at the same hour."

41. "For the wisdom, the energy, the strength, the sight, and the vitality of a man who approaches a woman covered with menstrual excretions, utterly perish."

42. "If he avoids her, while she is in that condition, his wisdom, energy, strength, sight, and vitality will increase."

43. "Let him not eat in the company of his wife, nor look at her, while she eats, sneezes, yawns, or sits at her ease."

44. "A Brahmana who desires energy must not look at (a woman) who applies collyrium to her eyes, has emplastered or unctuated herself or bears (a child)."

45. "Let him not blow a fire with his mouth; let him not look at a naked woman; let him not throw any impure substance into the fire, and let him not warm his feet at it."

46. "Let him not sleep alone in a deserted dwelling; let him not make (a superior) who is sleeping [AT HIM NOT converse with a nonristwoman, nor let him go to a sacrifice, if he is not chosen (to be officiating priest)."

136. "Let him not show particular attention to an enemy, to the friend of an enemy, to a wicked man, to a thief, or to the wife of another man."

137. "For in this world there is nothing so detrimental to long life as criminal conversation with another man's wife."

141. "Let him not insult those who have redundant limbs or are deficient in them, nor those destitute of knowledge, nor very aged men, nor those who have no beauty or wealth, nor those who are of low birth."

142. "Let him never offend the teacher who initiated him, nor him who explained the Veda, nor his father and mother, nor (any other) Guru, nor cows, nor Srotriyas, nor any men performing austerities."

179. "With an officiating or a domestic priest, with a teacher, with a maternal uncle, a guest and a dependant, with his infants, aged and sick men, with learned men, with his paternal relatives, connexions by marriage and maternal relatives."

180. "With his father and his mother, with female relatives with a brother, with his son and his wife, with his daughter and with his slaves, let him not have quarrels."

181. "If he avoids quarrels with these persons, he will be freed from all sins, and by suppressing (all) such (quarrels) a householder conquers all the following worlds."

183. "The female relatives (have power) over the world of the Apsarases, the maternal relatives over that of the Visve Devas, the connexions by marriage over that of the waters, the mother and the maternal uncle over the earth."

184. "Infants, aged, poor and sick men must be considered as rulers of the middle sphere, the eldest brother as equal to one's father, one's wife and one's son as one's own body."

185. "One's slaves as one's shadow, one's daughter as the highest object of tenderness; hence if one is offended by (any one of) these, one must bear it without resentment."

198. "When he has committed a sin, let him not perform a penance under the pretence (that the act is intended to gain) spiritual merit, (thus) hiding his sin under (the pretext of) a vow and deceiving women and Sudras."

205. "A Brahmana must never eat (a dinner given) at a sacrifice that is offered by one who is not a Srotriya, by one who sacrifices for a multitude of men, by a woman, or by a eunuch."

208. "Nor that at which the slayer of a learned Brahmana has looked, nor that which has been touched by a menstruating woman, nor that which has been pecked at by birds or touched by a dog."

211. "By one accused of a mortal sin (Athisasta), a hermaphrodite, an unchaste woman, or a hypocrite, nor (any sweet thing) that has turned sour, nor what has been kept a whole night, (nor the food) of a Sudra, nor the leavings (of another man)."

212. "Nor (the food given) by a physician, a hunter, a cruel man, one who eats the fragments (of another's meal), nor the food of an Ugra, nor that prepared for a woman in childbed, nor that (given at a dinner) where (a guest rises) prematurely (and) sips water, nor that (given by a woman) whose ten days of impurity have not elapsed."

213. "Nor (food) given without due respect, nor (that which contains) meat eaten for no sacred purpose, nor (that given) by a female who has no male (relatives), nor the food of an enemy, nor that (given) by the lord of a town, nor that (given) by outcasts, nor that on which anybody has sneezed."

216. "By trainers of hunting dogs, publicans, a washerman, a dyer, a pitiless (man), and a man in whose house (lives) a paramour (of his wife)."

217. "Nor (the food given) by those who knowingly bear with paramours (of their wives), and by those who in all matters are ruled by women, nor food (given by men) whose ten days of impurity on account of a death have not passed, nor that which is unpalatable."

120. "With or officiating or a Levite priest, with a teacher, with a paternal uncle, a mesne not a dependant, with his infants, deni and sick man, with learned and, with his paternal relatives, connexions by marriage and maternal relatives."

126. "With his father and his mother, with female relatives with a brother, with his son and his wife, with his daughter and with his slaves, let him not have quarrels."

121. "It be avoids quarrels with these persons, he will be freed from all sins, and by suppressing (all) such (quarrels) a benedictor conducts all the following worlds."

122. "The female relatives (have power) over the wealth of the Apsarases, the maternal relatives over that of the Viśve Devas, the connexions by marriage over that of the waters, the mother and the maternal uncle over the earth."

123. "Infants, aged, poor and sick men must be considered as under of the middle sphere, the eldest brother as equal to one's father, one's wife and one's son as one's own body."

124. "One's slaves as one's shadow, one's daughter as the lowest object of tenderness; hence if one is offended by (any one of) these, one must bear it without resentment."

125. "When he has committed a sin, let him not perform a penance under pretence (that the act is intended to gain) spiritual merit, (thus) displeasing his wife under (the pretence of) one desiring woman and Sudras."

126. "A Brahmana must never cut (a dinner given) if a sacrifice that is offered by one who is not a Srotriya, by one who sacrifices for a multitude of men, by a woman, or by a eunuch."

127. "Nor that at which the eldest of a learned Brahmana has looked, nor that which has been touched by a menstruating woman, nor that which has been peeked at by birds or touched by a dog."

128. "By one accused of a mortal sin (Abhisasta), a Patitasavitrika, an madman woman, or a hypocrite, nor (any sweet thing) that has turned sour, nor what has been kept a whole night, (nor the food) of a Sudra, nor the leavings (of another man)."

129. "For (the food given) by a physician, a hunter, a cruel man, one who the fishmonger (or poulterer's wife), nor the food of an (Ayu, nor that picked for a woman in ordinary, nor that (given at a dinner) where (a guest rises) prematurely (and) sips water, nor that (given by a woman) whose son has a source of impurity into not elapsed."

130. "Nor (food) given without due respect, nor (that which contains) food eaten for no sacred purpose, nor (that given) by a female who has no male (relatives), nor the food of an enemy, nor that (given) by the lord of a town, nor that (given) by eunuchs, nor that on which anybody has sneezed."

131. "By creators of hunting dogs, politicans, a watchman, a liar, a pitiless (man), and a man in whose house (lives) a harlot (or his wife)."

132. "Nor (the food given) by those who knowingly took (stolen property (or their wives), and by those who in all matters are ruled by women." Nor food (given by men) whose ten days of impurity on account of a death have not passed, nor that which is unpalatable."

219. "The food of an artisan destroys his offspring, that of a washerman his (bodily) strength; the food of a multitude and of harlots excludes him from (the higher) worlds."

220. "The food of a physician (is as vile as) pus, that of an unchaste woman (equal to) semen, that of a usurer (as vile as) ordure, and that of a dealer in weapons (as bad as) dirt."

232. "A giver of a carriage, or of a bed, a wife, a giver of protection supreme dominion, a giver of grain eternal bliss, a giver of the Veda (brahman) union with Brahman."

239. "For in the next world neither father, nor mother, nor wife, nor sons, nor relations stay to be his companions; spiritual merit alone remains (with him)."

## CHAPTER V.

9. "(The milk) of all wild animals excepting buffalo-cows, that of women, and all (substances turned) sour must be voided."

62. "(Or while) the impurity on account of a death is common to all (Sapindas), that caused by birth falls) on the parents alone; (or) it shall fall on the mother alone, and the father shall become pure by bathing."

72. "(On the death) of females (betrothed but) not married (the bridegroom and his) relatives are purified after three days, and the paternal relatives become pure according to the same rule."

89. "Libations of water shall not be offered to those who (neglect the prescribed rites and may be said to) have been born in vain, to those born in consequence of an illegal mixture of the castes, to those who are ascetics (of heretical sects), and to those who have committed suicide."

90. "To women who have joined a heretical sect, who through lust live (with many men), who have caused an abortion, have killed their husbands, or drink spirituous liquor."

108. "By earth and water is purified what ought to be made pure, a river by its current, a woman whose thoughts have been impure by the menstrual secretion, a Brahmana by abandoning the world (samnyasa)."

130. "The mouth of a woman is always pure, likewise a bird when he causes a fruit to fall; a calf is pure on the flowing of the milk, and the dog when he catches a deer."

139. "Let him who desires bodily purity first sip water three times, and then twice wipe his mouth; but a woman and a Sudra (shall perform each act) once (only)."

146. "Thus the rules of personal purification for men of all castes, and those for cleaning (inanimate) things, have been fully declared to you; hear how the duties of women."

147. "By a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house."

148. "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent."

CHAPTER V.

5. "(The milk) of all wild animals excepting hedgehog-cows, that of cows, and all (substances turned) sour must be voided."

52. "(Or while) the impurity on account of a death is common to all (Sapindas), that caused by birth (falls) on the learned elders (or) it shall fall on the mother alone, and the father shall become pure by bathing."

[illegible] ("On the death) of [illegible] (betrothed but) not married (the [illegible] and [illegible] relatives are purified after three days, and the [illegible] relatives become pure according to the same rule."

80. "Libations of water shall not be offered to those who (neglect the prescribed rites and may be said to) have been born in vain, to those born in consequence of an illegal mixture of the castes, to those who are ascetics (or heretical ones), and to those who have committed suicide."

[illegible] "The women who have joined a heretical sect, who [illegible] live (with many men), who have obtained an abortion, have killed their husbands, or drink spirituous liquor."

108. "By earth and water is purified what ought to be made pure, a river by its current, a woman whose thoughts have been impure by the (amorous) secretion, a Brahmana by abandoning the world (sannyasa)."

136. "The mouth of a woman is always pure, likewise a bird when he causes a fruit to fall, a calf is pure on the flowing of the milk, and the dog when he catches a deer."

139. "Let him who desires bodily purity first sip water three times, and then take wipe his mouth; but a woman and a Sudra (shall perform each act) once (only)."

146. "Thus the rules of personal purification for men of all castes, and those for cleaning (inanimate) things, have been fully declared to you; hear now the duties of women."

147. "By a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house."

148. "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent."

149. "She must not seek to separate herself from her father, husband, or sons; by leaving them she would make both (her own and her husband's) families contemptible."

150. "She must always be cheerful, clever in (the management of her) household affairs, careful in cleaning her utensils, and economical in expenditure."

151. "Him to whom her father may give her, or her brother with the father's permission, she shall obey as long as he lives, and when he is dead, she must not insult (his memory)."

152. "For the sake of procuring good fortune to (brides), the recitation of benedictory texts (svastyayana), and the sacrifice to the Lord of creatures (Pragapati) are used at weddings; (but) the betrothal (by the father or guardian) is the cause of (the husband's) dominion (over his wife)."

153. "The husband who wedded her with sacred texts, always give happiness to his wife, both in season and out of season, in this world and in the next."

154. "Though destitute of virtue, or seeking pleasure (elsewhere), or devoid of good qualities, (yet) a husband must be constantly worshipped as a god by a faithful wife."

155. "No sacrifice, no vow, no fast must be performed by women apart (from their husbands); if a wife obeys her husband, she will for that (reason alone) be exalted in heaven."

156. "A faithful wife, who desires to dwell (after death) with her husband, must never do anything that might displease him who took her hand, whether he be alive or dead."

157. "At her pleasure let her emanciate her body by (living on) pure flowers, roots, and fruit; but she must never even mention the name of another man after her husband has died."

158. "Until death let her be patient (of hardships), self-controlled, and chaste, and strive (to fulfil) that most excellent duty which (is prescribed) for wives who have one husband only."

160. "A virtuous wife who after the death of her husband constantly remains chaste, reaches heaven, though she have no son , just like those chaste men."

161. "But a woman who from a desire to have offspring violates her duty towards her (deceased) husband, brings on herself disgrace in this world, and loses her place with her husband (in heaven)."

162. "Offspring begotten by another man is here not (considered lawful), nor (does offspring begotten) on another man's wife (belong to the begetter), nor is a second husband anywhere prescribed for virtuous women."

163. "She who cohabits with a man of higher caste, forsaking her own husband who belongs to a lower one, will become contemptible in this world, and is called a remarried woman (parapurva)."

164. "By violating her duty towards her husband, a wife is disgraced in this world, (after death) she enters the womb of a jackal, and is tormented by diseases (the punishment of) her sin."

165. "She who, controlling her thoughts, words, and deeds, never slights her lord, resides (after death) with her husband (in heaven), and is called a virtuous (wife)."

166. "In reward of such conduct, a female who controls her thoughts, speech, and actions, gains in this (life) highest renown, and in the next (world) a place near her husband."

167. "A twice-born man, versed in the sacred law, shall burn a wife of equal caste who conducts herself thus and dies before him, with (the sacred fires used for) the Agnihotra, and with the sacrificial implements."

168. "Having thus, at the funeral, given the sacred fires, to his wife who dies before him, he may marry again, and again kindle (the fires)."

169. "(Living) according to the(preceding) rules, he must never neglect the five (great) sacrifices, and, having taken a wife, he must dwell in (his own) house during the second period of his life."

## CHAPTER VI.

3. "Abandoning all food raised by cultivation, and all his belongings, he may depart into the forest, either committing his wife to his sons, or accompanied by her."

## CHAPTER VIII.

27. "The king shall protect the inherited (and other) property of a minor, until he has returned (from his teacher's house) or until he has passed his minority."

28. "In like manner, care must be taken of barren women, of those who have no sons, of those whose family is extinct, of wives and widows faithful to their lords, and of women afflicted with diseases."

29. "A righteous king must punish like thieves those relatives who appropriate the property of such females during their lifetime."

68. "Women should give evidence for women; and twice-born men, for twice-born men (of the) same (king); virtuous Sudras for Sudras; and men of the lowest castes for the lowest."

69. "But any person whatsoever, who has personal knowledge (of an act committed) in the interior apartments (of a house), or in a forest, or of (a crime causing) loss of life, may give evidence between the parties."

70. "On failure (of qualified witnesses, evidence) may be given (in such cases)by a woman, by an infant, by an aged man, by a pupil, by a relative, by a slave, or by a hired servant."

72. "In all cases of violence, of theft and adulterty, of defamation and assault, he must not examine the (competence of) witnesses (too strictly)."

87. "The (judge), being purified, shall ask in the forenoon the twice-born (witnesses) who (also have been) purified, (and stand) facing the north or the east, to give true evidence in the presence of (images of) the gods and of Brahmanas."

[illegible] publishing company, inc.

166. "The one controlling her thoughts, words, and deeds, never alights for long, resting (after death) with her husband (in heaven), and is called a virtuous (wife)."

167. "In a case of such conduct, a wife who controls her thoughts, speech, and actions [perfectly] in this (life) highest reward, and in the next (world) a place near her husband."

168. "A wife who, united to the second Jar, shall form a tie of equal concord and constancy thereby has also before him, with (the second five who) the Ashtakas, and with the ancestral implements."

169. "Having then, at the (usual) five sacrifices, to his wife who is before him, by any means again, and again kindle (the fires)."

170. "(Living) according to the (prescribed) rules, he must never let the five (great) sacrifices, and, having taken a wife, he must dwell in (his own) house during the second period of his life."

CHAPTER VI.

1. "Abandoning all food raised by cultivation, and all his belongings, he may depart into the forest, either completing his wife to his sons, or accompanied by her."

CHAPTER VIII.

17. "The king shall protect the inherited (and other) property of a minor, until he has returned (from his teacher's house) or until he has passed his minority."

18. "In like manner, care must be taken of rather women, of those who have no sons, of those family in extinct, of wives and widows initiated to their lords, and of women afflicted with diseases."

19. "A righteous king must punish like thieves those relatives who appropriate the property of such females during their lifetime."

20. "Women should give evidence for women and twice-born men, for twice-born men (of the) same (class), virtuous Sudras for Sudras; and one of the lowest caste, for the lowest."

21. "Not any person whatsoever, who has formerly undergone (or on account) in the interior apartments (of a house), or in a forest, or of (a crime causing) loss of life, may give evidence between the parties."

22. "The failure (of qualified witnesses, evidence) may be given (in such cases) by a woman, by an infant, by an aged man, by a pupil, by a relative, by a slave, or by a friend servant."

23. "In all cases of robbery, of theft, and violence, of injurious and assault, he must examine the (appearance of) witnesses (too strictly)."

24. "The (judge), having purified, shall sit in the forenoon the twice-born (witnesses) who (also have been) purified, (and stand) facing the north or the east, so give true evidence in the presence of (images of) the gods and of Brahmanas."

88. "Let him examine a Brahmana (beginning with) 'Speak', a Kshatriya (beginning with) 'Speak the truth', a Vaisya (admonishing him) by (mentioning) his kine, grain, and gold, a Sudra (threatening him) with (the guilt of) every crime that causes loss of caste."

89. "(Saying), 'Whatever places (of torment) are assigned (by the sages) to the slayer of a Brahmana, to the murderer of women and children, to him who betrays a friend, and to an ungrateful man, those shall be thy (portion), if thou speakest falsely."

112. "No crime, causing loss of caste, is committed by swearing (falsely) to women, the objects of one's desire, at marriages, for the sake of the fodder for a cow, or of fuel, and in (order to show) favour to a Brahmann."

149. "A pledge, a boundary, the property of infants, and (open) deposit, a sealed deposit, women, the property of the king and the wealth of a Srotriya are not lost in consequence of (adverse) enjoyment."

204. "If, after one damsel has been shown, another be given to the bridegroom, he may marry them both for the same price, that Manu ordained."

205. "He who gives (a damsel in marriage), having first openly declared her blemishes, whether she insane, or afflicted with leprosy, or have lost her virginity, is not liable to punishment."

224. "But the king himself shall impose a fine of ninety-six panas on him who gives a blemished damsel (to a suitor) without informing (him of the blemish)."

225. "But that man who, out of malice, says of a maiden, 'She is not a maiden,' shall be fined one hundred (panas), if he cannot prove her blemish."

226. "The nuptial texts are applied solely to virgins, (and) nowhere among men to females who have lost their virginity, for such (females) are excluded from religious ceremonies."

227. "The nuptial texts are a certain proof (that a maiden has been made a lawful) wife; but the learned should know that they (and the marriage-ceremony) are complete with the seventh step (of the bride around the sacred fire)."

275. "He who defames his mother, his father, his wife, his brother, his son, or his teacher, and he who gives not the way to his preceptor, shall be compelled to pay on hundred (panas)."

299. "A wife, a son, a slave, a pupil, and a (younger) brother of the full blood, who have committed faults, may be beaten with a rope or a split bamboo."

300. "But on the back part of the body (only), never on a noble part; he who strikes them otherwise will incur the same guilt as a thief."

323. "For stealing men of noble family and especially women and the most precious gems, (the offender) deserves corporal (or capital) punishment."

335. "Neither a father, nor a teacher, nor a friend, nor a mother, nor a wife, nor a son, nor a domestic priest must be left unpunished by a king, if they do not keep within their duty."

349. "In their own defence, in a strife for the fees of officiating priests, and in order to protect woman and Brahmanas; he who (under such circumstances) kills in the cause of right, commits no sin."

352. "Men who commit adultery with the wives of others, the king shall cause to be marked by punishments which cause terror, and afterwards banish."

353. "For by (adultery) is caused a mixture of the castes (varna) among men; thence (follows) sin, which cuts up even the roots and causes the destruction of everything."

354. "A man formerly accused of (such offences), who secretly converses with another man's wife, shall pay the first (or lowest) amercement."

355. "But a man, not before accused, who (thus) speaks with (a woman) for some (reasonable) cause, shall not incur any guilt, since in him there is no transgression."

356. "He who addresses the wife of another man at a Tirtha, outside the village, in a forest, or at the confluence of rivers, shall suffer (the punishment for) adulterous acts (samgrahana)."

357. "Offering presents (to a woman), romping (with her), touching her ornaments and dress, sitting with her on a bed, all (these acts) are considered adulterous acts (samgrahana)."

358. "If one touches a woman in a place (which ought) not (to be touched) or allows (oneself to be touched in such a spot), all (such acts done) with mutual consent are declared (to be) adulterous (samgrahana)."

359. "A man who is not a Brahmana ought to suffer death for adultery (samgrahana); for the wives of all the four castes even must always be carefully guarded."

360. "Mendicants, bards, men who have performed the initiatory ceremony of a Vedic sacrifice, and artisans are not prohibited from speaking to married women."

361. "Let no man converse with the wives of others after he has been forbidden (to do so); but he who converses (with them), in spite of a prohibition, shall be fined one suvarna."

362. "This rule does not apply to the wives of actors and singers, nor (of) those who live on (the intrigues of) their own (wives); for such men send their wives (to others) or, concealing themselves, allow them to hold criminal intercourse."

363. "Yet he who secretly converses with such woman, or with female slaves kept by one (master), and with female ascetics shall be compelled to pay a small fine."

364. "He who violates an unwilling maiden shall instantly suffer corporal punishment; but a man who enjoys a willing maiden shall not suffer corporal punishment, if (his caste be) the same (as hers)."

365. "From a maiden who makes advances to a (man of) high (caste), he shall not take any fine; but her, who courts a (man of) low (caste), let him force to life confined in her house."

366. "A (man of) low (caste) who makes love to a maiden (of) the highest (caste) shall suffer corporal punishment; he who addresses a maiden (of) equal (caste) shall pay the nuptial fee, if her father desires it."

367. "But if any man through insolence forcible contaminates a maiden, two of his fingers shall be instantly cut off, and he shall pay a fine of six hundred (panas)."

386. "One who commits adultery with the wives of others, the king shall cause to be marked by punishments which cause horror, and afterwards banish."

387. "The [illegible] (adultery) is caused a seizure of the wastes (waters) among [illegible] (whose [illegible] with [illegible] cuts up even the roots and causes the destruction of everything."

388. "A man formerly accused of (such offenses) who correctly conducts [illegible] in the water, shall pay to the king (as a fine) [illegible] count."

389. "But a man, not before accused, who (thus) speaks with (a view) for more (reasonable) cause, shall not incur any guilt, since in the [illegible] is no transgression."

390. "He who addresses the wife of another man at a time, outside the village, in a forest, or at the confluence of rivers, shall suffer (the punishment for) adulterous acts (overcome)."

391. "Offering presents (to a woman), resorting (with her), [illegible] her ornaments and dress, sitting with her on a seat, all (these acts) are considered adulterous acts (overcome)."

392. "If one touches a woman in a place (which ought) not (to be touched) or allows (oneself to be touched in such a spot), all (such acts are) with mutual consent are declared (to be) adulterous (overcome)."

393. "A man who is not a [illegible] (overcome) [illegible] for the sake of all the four castes even must always be carefully guarded."

394. "Adulterers, [illegible] men who have performed the initiatory ceremony of a Vedic sacrifice, and artisans are not [illegible] from capability to control women."

395. "But to one overcome with the wines of others [illegible] of a prohibition, shall be fined one hundred."

396. "This rule does not apply to the [illegible] and others, for (or) those who live on (the leavings of) their own (wives)? for such men and their wives (to observe) or, concealing themselves, allow them to hold criminal intercourse."

397. "But he who secretly connects with such women, or with females always kept by one (master), and with female ascetics shall be compelled to pass a small fine."

398. "The [illegible] an ordinary maiden shall instantly suffer corporal punishment; but a man who enjoys a willing maiden shall not suffer corporal punishment, if (his caste be) the same (as hers)."

399. "[illegible] a maiden who enjoys advances to a (man of) high caste, he shall not take any fleet but he, the coupler a (man of) low (caste), let him force be life confined in his house."

400. "A (man of) low (caste) who makes love to a maiden (of) the highest (caste) shall suffer corporal punishment in the abduction a maiden (of) equal (caste) shall pay the nuptial fee, if her father desires it."

401. "But if any man through impudence forcibly contaminate a maiden, two of his fingers shall be instantly cut off, and he shall pay a fine of six hundred (panas)."

368. "A man (of) equal (caste) who defiles a willing maiden shall not suffer the amputation of his fingers, but shall have to pay a fine of two hundred (panas) in order to deter him from a repetition (of the offence)."

369. "A damsel who pollutes (another) damsel must be fined two hundred (panas), pay the double of her (nuptial) fee, and receive ten (lashes with a) rod."

370. "But a woman who pollutes a damsel shall instantly have (her head) shaved or two fingers cut off, and be made to ride (through the town) on a donkey."

371. "If a wife, proud of the greatness of her relatives or (her own) excellence, violates the duty which she owes to her lord, the king shall cause her to be devoured by dogs in a place frequented by many."

378. "A Brahmana who carnally knows a guarded Brahmani against her will, shall be fined one thousand (panas); but he shall be made to pay five hundred, if he had connexion with a willing one."

382. "If a Vaisya approaches a guarded female of the Kshatriya caste, or a Kshatriya a (guarded) Vaisya woman, they both deserve the same punishment as in the case of an unguarded Brahmana female."

389. "Neither a mother, nor a father, nor a wife, nor a son shall be cast off; he who casts them off, unless guilty of a crime causing loss of caste, shall be fined by the king six hundred (panas)."

404. "At a ferry an (empty) cart shall be made to pay one pana, a man's (load) half a pana, an animal and a woman one quarter of a (pana), an unloaded man one-half of a quarter."

407. "But a woman who has been pregnant two months or more, an ascetic, a hermit in the forest, and Brahmanas who are students of the Veda, shall not be made to pay toll at a ferry."

416. "A wife, a son, and a slave, these three are declared to have no property; the wealth which they earn is (acquired) for him to whom they belong."

## CHAPTER IX.

2. "Day and night women must be kept in dependence by the male (of) their (families), and, if they attach themselves to sensual enjoyments, they must be kept under one's control."

3. "Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence."

4. "Reprehensible is the father who gives not (his daughter in marriage) at the proper time; reprehensible is the husband who approaches not (his wife in due season), and reprehensible is the son who does not protect his mother after her husband has died."

5. "Women must particularly be guarded against evil inclinations however trifling (they may appear); for, if they are not guarded they will bring sorrow on two families."

6. "Considering that the highest duty of all castes, even weak husbands (must) strive to guard their wives."

7. "He who carefully guards his wife, preserves (the purity of) his offspring, virtuous conduct, his family, himself, and his (means of acquiring) merit."

...publishing company, inc.

368. "A man (or) equal (mate) who refills a visiting maiden shall not suffer the deportation of his figure, but shall have to pay a fine of two hundred (pence) in order to deter him from a repetition (of the offence)."

369. "A decent who pollutes (rapture) damsel must be fined two hundred (pence), his double of her (marital) fee, and possibly ten (lashes with a) rod."

370. "But a woman who pollutes a damsel shall instead have (her hand) shaved at the figure eye off, and be made to ride (through the town) on a donkey."

371. "If a wife, proud of the greatness of her relative or (her own) excellence, violates the duty which she owes to her lord, the king shall cause her to be devoured by dogs in a place frequented by many."

372. "A Brahman who carnally knows a guarded Brahmani against her will, shall be fined one thousand (pence); but he shall be made to pay five hundred, if he had connexion with a willing one."

373. "If a Vaisya approaches a guarded female of the Kshatriya caste, or a Kshatriya a (guarded) Vaisya woman, they both deserve the same punishment as in the case of an unguarded Brahmani female."

374. "Nothing a mother, nor a father, nor a wife, nor a son shall be cast off by the caste; then off, unless guilty of a caste-cruel loss of caste, shall be fined by the king six hundred (pence)."

375. "At a ferry or (ought) boat shall be made by the king's (load) half a pana, an animal and a human one quarter of a (pana), an unloaded man one-half of a quarter."

376. "But a woman who has been procured two panas or more, an animal, a boat in the forest, and Brahmins' (persons) ornaments of the Vedas, shall not be made to pay toll at a ferry."

377. "A wife, a son, and a slave, these three are declared to have no property; the wealth which they earn is (acquired) for him to whom they belong."

## CHAPTER IX.

1. "They and night woman must be kept in abstinence by the male (of) their (position), and, if they attach themselves to carnal enjoyment, they must be kept under one's control."

2. "Her father protects (her) in childhood, her husband protects (her) in youth, and her sons protect (her) in old age; a woman is never fit for independence."

3. "Reprehensible is the father who gives not (his daughter in marriage) at the proper time; reprehensible is the husband who approaches not (his wife in due season), and reprehensible is the son who does not protect his mother after her husband has died."

4. "Women must particularly be guarded against evil inclinations, however trifling (they may appear); for, if they are not guarded they will bring sorrow on two families."

5. "Considering that the highest duty of all castes, even weak husbands (must) strive to guard their wives."

6. "He who carefully guards his wife, preserves (the purity of) his offspring, virtuous conduct, his family, himself, and his (means of righteous) merit."

8. "The husband, after conception by his wife, becomes an embryo and is born again of her; for that is the wifehood of a wife (gaya), that he is born (gayate) again by her."

9. "As the male is to whom a wife cleaves, even so is the son whom she brings forth; let him therefore carefully guard his wife, in order to keep his offspring pure."

10. "No man can completely guard women by force; but they can be guarded by the employment of the (following) expedients."

11. "Let the (husband) employ his (wife) in the collection and expenditure of his wealth, in keeping (every thing) clean in (the fulfilment of) religious duties, in the preparation of his food, and in looking after the household utensils."

12. "Women, confined in the house under trustworthy and obedient servants, are not (well) guarded; but those who of their own accord keep guard over themselves, are well guarded."

13. "Drinking (spirituous liquor), associating with wicked people, separation from the husband, rambling abroad, sleeping (at unseasonable hours), and dwelling in other men's houses are the six causes of the ruin of women."

14. "Women do not care for beauty, nor is their attention, fixed on age; (thinking), '(It is enough that) he is a man,' they give themselves to the handsome and to the ugly."

15. "Through their passion for men, through their mutable temper, through their natural heartlessness, they become disloyal towards their husbands, however carefully they may be guarded in this (world)."

16. "Knowing their disposition, which the Lord of creatures laid in them at the creation, to be such, (every) man should most strenuously exert himself to guard them."

17. "(When creating them) Manu allotted to women (a love of their) bed, (of their) seat and (of) ornament, impure desires, wrath, dishonesty, malice, and bad conduct."

18. "For women no (sacramental) rite (is performed) with sacred texts, thus the law is settled; women (who are) destitute of strength and destitute of (the knowledge of) Vedic texts, (are as impure as) falsehood (itself), that is a fixed rule."

19. "And to this effect many sacred texts are sung also in the Vedas, in order to (make) fully known the true disposition (or women); hear (now those texts which refer to) the expiation of their (sins)."

20. "'If my other, going astray and unfaithful, conceived illicit desires, may my father keep that seed from me,' that is the scriptural text."

22. "Whatever be the qualities of the man with whom a women is united according to the law, such qualities even she assumes, like a river (united) with the ocean."

23. "Akshamala, a woman of the lowest birth, being united to Vasishtha and Sarangi, (being united) to Mandapala, became worthy of honour."

24. "These and other females of low birth have attained eminence in this world by the respective good qualities of their husbands."

orientalia publishing company, inc.

8. "The husband, after conception by his wife, becomes an embryo and is born again of hers for that is the widehood of a wife (Gyno), that he is born (Gynate) again by her."

9. "As the male is to whom a wife cleaves, even so is the son whom she bridge forth to him therefore carefully guard his wife, in order to keep his offspring pure."

10. "No man can completely guard woman by force! but they can be guarded by the employment of the (following) expedients."

11. "Let the (husband) employ his (wife) in the collection and expenditure of his wealth, in keeping (every thing) clean in (the fulfilment of) religious duties, in the preparation of his food, and in looking after the household utensils."

12. "Women, confined in the house under trustworthy and obedient servants, are not (well) guarded; but those who of their own accord keep guard over themselves, are well guarded."

13. "Drinking (spirituous liquor), associating with wicked people, separation from the husband, rambling abroad, sleeping (at unseasonable hours), and dwelling in other men's houses are the six causes of the ruin of women."

14. "Women do not care for beauty, nor is their attention fixed on age (thinking), 'It is enough that he is a man,' they give themselves to the husbands and to the ugly."

15. "Through their passion for men, through their unstable temper, through their natural boorishness, they become disloyal towards their husbands, however carefully they may be guarded in this (world)."

16. "Knowing their disposition, which the Lord of creatures laid in them at the creation, to be such, (every) man should most strenuously exert himself to guard them."

17. "(When creating them) Manu allotted to women (a love of their) bed, (or their) seat and (or) ornament, impure desire, wrath, dishonesty, malice, and bad conduct."

18. "For women no (sacramental) rite (is performed) with sacred texts, thus the law is settled; women (the sex) destitute of strength and destitute of (the knowledge of) Vedic texts, (are as impure as falsehood (itself), that is a fixed rule."

19. "And to this effect many sacred texts are duly also in the Vedas, in order to (make) fully known the true disposition (or nature) pure (men those sacred texts which refer to) the expiation of their (sins)."

20. "If by either, doing safety and unclothed illicit deeds, may by neither keep that good from me,' that is the scripture."

21. "Whatever be the qualities of the man with whom a woman is united according to the law, such qualities even she assumes, like a river (united) with the ocean."

22. "Whosoever, a woman of the lowest birth, being united to Vasishtha and Sarngi, (being united) to Kashyapa, became worthy of honour."

23. "Anushmati, a woman of the lowest birth, being united to Vasishtha (this world by the respective good qualities of their husbands."

24. "Those and other females of low birth have attained eminence in

26. "Between wives (striyah) who (are destined) to bear children, who secure many blessings, who are worthy of worship and irradiate (their) dwellings, and between the goddesses of fortune (sriyah, who reside) in the houses (of men), there is no difference whatsoever."

27. "The production of children, the nurture of those born, and the daily life of men, (of these matters) woman is visibly the cause."

28. "Offspring, (the due performance of) religious rites, faithful service, highest conjugal happiness and heavenly bliss for the ancestors and oneself, depend on one's wife alone."

29. "She who, controlling her thoughts, speech, and acts, violates not her duty towards her lord, dwells with him (after death) in heaven, and in this world is called by the virtuous a faithful (wife, sadhvi)."

30. "But for disloyalty to her husband a wife is censured among men, and (in her next life) she is born in the womb of a jackal and tormented by diseases, the punishment of her sin."

32. "They (all) say that the male issue (of a woman) belongs to the lord, but with respect to the (meaning of the term) lord the revealed texts differ; some call the begetter (of the child the lord), others declare (that it is) the owner of the soil with the seed."

33. "By the sacred tradition the woman is declared to be the soil, the man is declared to be the seed; the production of all corporeal beings (takes place) through the union of the soil with the seed."

34. "In some cases the seed is more distinguished, and in some the womb of the female; but when both are equal, the offspring is most highly esteemed."

41. "Never therefore must a prudent well-trained man, who knows the Veda and its Angas and desires long life, co-habit with another's wife."

45. "He only is a perfect man who consists (of three persons united) his wife, himself, and his offspring; thus (says the Veda), and (learned) Brahmanas propound this (maxim) likewise, 'The husband is declared to be one with the wife.'"

46. "Neither by sale nor by repudiation is a wife released from her husband; such we know the law to be, which the Lord or creatures (Bragapati) made of old."

47. "Once is the partition (of the inheritance) made, (once is) a maiden given in marriage, (and) once does (a man) say 'I will give'; each of those three (acts is done) once only."

48. "As with cows, mares, female camels, slave-girls, buffalo-cows, she-goats, and ewes, it is not the begetter (or his owner) who obtains the offspring, even thus (it is) with the wives of others."

51. "Thus men who have no marital property in women, but sow their seed in the soil of others, benefit the owner of the woman; but the giver of the seed reaps no advantage."

55. "Know that such is the law concerning the offspring of cows, mares, slave-girls, female camels, she-goats, and ewes, as well as of females of birds and buffalo-cows."

56. "Thus the comparative importance of the seed and of the womb has been declared to you; I will next propound the law (applicable) to women in times of misfortune."

36. "Between wives (straych) who (are destined) to bear children, who secure many blessings, who are worthy of worship and irradiate (their) dwellings, and between the goddesses of fortune (straych, who reside) in the bosoms (of men), there is no difference whatsoever."

37. "The procreation of children, the nurture of those born, and the daily life of men, (of these matters) woman is visibly the cause."

38. "Offspring, (the due performance of) religious rites, faithful service, highest conjugal happiness and heavenly bliss for the ancestors and oneself, depend on one's wife alone."

39. "She who, controlling her thoughts, speech, and acts, violates not her duty towards her lord, lives with him (after death) in heaven, and in this world is called by the virtuous a faithful (wife, sadhvi)."

40. "Not (so) disloyalty to her husband as wife is censured among men, and (in her next life) she is born in the womb of a jackal and tormented by diseases, the (just)ishment of her sin."

41. "They (all) say that the male issue (of a woman) belongs to the lord, but with regard to the (problem of the sons) lord the reveal d text (that is) the owner of the soil with the good."

42. "By the sacred tradition the woman is declared to be the soil, the man is declared to be the seed; the production of all corporeal beings (here) depends through the union of the soil with the seed."

43. "In some cases the seed is more distinguished, and in some the soil of the foretold; but when both are equal, the offspring is most highly esteemed."

44. "Never therefore must a prudent well-trained man, who has seen the Veda and the Angas and desires long life, copulate with another's wife."

45. "No only is a portent man who copulates (or three persons united) with (another), and his offspring thus (sons the food), and (incensed) Yamadeva proposed this (maxim) likewise, 'The husband is declared to be one with the wife'."

46. "Neither by sale nor by repudiation is a wife released from her husband; such is our law. The lot by which the Lord or creature (Prajapati) made of old."

47. "Since it is the institution for the (husband) only, (once he) has taken (a wife), (and) when dead (a man) may 'I will (take) each of these three (wives) is good) once only."

48. "As with cows, mares, female camels, slave-girls, buffalo-cows, she-goats, and ewes, it is not the begetter (or his owner) who obtains the offspring, even (it is) with the wives of others."

49. "Even one who bore no marital property in women, but ow's it (seed in the soil of others), (hardly) the owner of the woman; but the giver of the seed reaps no advantage."

50. "Know that such is the law concerning the offspring of cows, mares, slave-girls, female camels, she-goats, and ewes, as well as of (wives of) (buffalo-cows)."

51. "Thus the comparative importance of the seed and of the womb has been declared to you; I will next propound the law (applicable) to (the time of misfortune)."

57. "The wife of an elder brother is for his younger (brother) the wife of a Guru; but the wife of the younger is declared (to be) the daughter-in-law of the elder."

58. "An elder (brother) who approaches the wife of the younger, and a younger (brother who approaches) the wife of the elder, except in times of misfortune, both becomes outcasts, even though (they were duly) authorized."

59. "On failure of issue (by her husband) a woman who has been authorized, may obtain, (in the) proper (manner prescribed) the desired offspring by (cohabitation with) a brother-in-law or (with some other) Sapinda (of the husband)."

60. "He (who is) appointed to (cohabit with) the widow shall (approach her) at night anointed with clarified butter and silent, (and) beget one son, by no means a second."

61. "Some (sages), versed in the law, considering the purpose of the appointment not to have been attained by those two (on the birth of the first), think that a second (son) may be lawfully procreated on (such) women."

62. "But when the purpose of the appointment to (cohabit with) the widow has been attained in accordance with the law, those two shall behave towards each other like a father and a daughter-in-law."

63. "If those two (being thus) appointed deviate from the rule and act from carnal desire, they will both become outcasts, (as men) who defile the bed of a daughter-in-law or of a Guru."

64. "By twice-born men a widow must not be appointed to cohabit with any other (than her husband); for they who appoint (her) to another (man), will violate the eternal law."

65. "In the sacred texts which refer to marriage the appointment (of widows) is nowhere mentioned, nor is the re-marriage of widows prescribed in the rules concerning marriage."

67. "That chief of royal sages who formerly possessed the whole world, caused a confusion of the castes (varna), his intellect being destroyed by lust."

68. "Since that (time) the virtuous censure that (man) who in his folly appoints a woman, whose husband died, to (bear) children (to another man)."

69. "If the (future) husband of a maiden dies after troth verbally plighted, her brother-in-law shall wed her according to the following rule."

70. "Having, according to the rule, espoused her (who must be) clad in white garments and be intent on purity, he shall approach her once in each proper season until issure (be had)."

71. "Let no prudent man, after giving his daughter to one (man), give her again to another; for he who gives (his daughter) whom he had before given, incurs (the guilt of) speaking falsely regarding a human being."

72. "Though (a man) may have accepted a damsel in due form he may abandon (her if she be) blemish, diseased, or deflowered, and (if she have been) given with fraud."

73. "If anybody gives away a maiden possessing blemishes without declaring them, (the bridegroom) may annul that (contract) with the evil-minded giver."

publishing company inc

74. "A man who has business (abroad) may depart after securing a maintenance for his wife; for a wife, even though virtuous, may be corrputed if she be distressed by want of subsistence."

75. "If (the husband) went on a journey after providing (for her), the wife shall subject herself to restrains in her daily life; but if he departed without providing (for her), she may subsist by blameless manual work."

76. "If the husband went abroad for some sacred duty, (she) must wait for him eight years, if (he went) to (acquire) learning or fame six (years), if (he went) for pleasure three years."

77. "For one year let a husband bear with a wife who hates him; but after (the lapse of) a year let him deprive her of her property and cease to cohabit with her."

78. "She who shows disrespect to (a husband) who is addicted to (some evil) passion, is a drunkard, or diseased shall be deserted for three months (and be) deprived of her ornaments and furniture."

79. "But she who shows aversion towards a mad or out-cast (husband), a eunuch, one destitute of manly strength, or one afflicted with such diseases as punish crimes, shall neither be cast off nor be deprived of her property."

80. "She who drinks spirituous liquor, is of bad conduct, rebellious, diseased, mischievous, or wasteful may at any time be superseded (by another wife)."

81. "A barren wife may be superseded in the eighth year, she whose children (all) die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay."

82. "But a sick wife who is kind (to her husband) and virtuous in her conduct, may be superseded (only) with her own consent and must never be disgraced."

83. "A wife who, being superseded, in anger departs from (her husband's) house, must either be instantly confined or cast off in the presence of the family."

84. "But she who, though having been forbidden, drinks spirituous liquor, even at festivals, or goes to public spectacles or assemblies, shall be fined six krishnalas."

85. "If twice-born men wed women of their own and of other (lower castes), the seniority, honour, and habitation of those (wives) must be (settled) according to the order of the castes (varna)."

86. "Among all (twice-born men) the wife of equal caste alone, not a wife of a different caste by any means, shall personally attend her husband and assist him in his daily sacred rites."

87. "But he who foolishly causes that (duty) to be performed by another, while his wife of equal caste is alive, is declared by the ancients (to be) as (despicable) as a Kandala (sprung from the) Brahmana (caste)."

88. "To a distinguished, handsome suitor (of) equal (caste) should (a father) give his daughter in accordance with the prescribed rule, though she have not attained (the proper age)."

89. "(But) the maiden, though marriageable, should rather stop in (the father's) house until death, than that he should ever give her to a man destitute of good qualities."

74. "A man who has business (abroad) may depart after securing a maintenance for his wife for a year, even though virtuous, may be corrupted if she is distressed by want of subsistence."

75. "If (the husband) went on a journey after providing (for her), the wife shall neglect herself to restrain in her daily life; but if he departed without providing (for her), she may subsist by whatever means."

76. "If the husband went abroad for some hoped duty, (she) must wait for his eight years, if (he went) to (acquire) learning or three years (more), if (he went) for pleasure three years."

77. "For one year let a husband bear with a wife who hates him after (the lapse of) a year let his departs her of her property and cease to cohabit with her."

78. "She who absents herself (a husband) who is addicted to (some evil) practice, is a drunkard, or diseased shall be deserted for three months (and be) deprived of her ornaments and furniture."

79. "But the one whose exertion towards a god or out-cast (husband), a cripple, and destitute of manly strength, or one afflicted with such diseases as yaws, shall neither be cast off nor be deprived of her property."

80. "She who drinks spirituous liquor, is of ill conduct, rebellious, disagreeable, vicentious, or contrary may at any time be superseded (by another wife)."

81. "A barren wife may be superseded in the eighth year, she whose children (all) die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay."

82. "But a wife who is kind (to her husband) and virtuous in her conduct, may be superseded (only) with her own consent and must never be disgraced."

83. "A wife who, being superseded, is eager depart from (her husband's) house, must either be indirectly confined or cast off in the presence of the family."

84. "But she who, though having been forbidden, drinks spirituous liquor, runs at festivals, or goes to public spectacles or dancings, shall be fined six krishanas."

85. "If (she-born man and woman of their own and of other (lower castes), the sanctity, honour, and habitation of those (wives) must be (settled) according to the order of the castes (varna)."

86. "Among all (twice-born men) the wife of equal caste alone, not a wife of a different caste by any means, shall personally attend for husband and assist him in his daily sacred rites."

87. "But he who forsakably ceases that (duty) to be performed by another, wife his wife of equal caste is allow, is ordained by the ordainer (to be) as (deceptable) as Kandala (spring from the) Brahmans (caste)."

88. "To a distinguished, handsome suitor (of) equal (caste) should, (a father) give his daughter in accordance with the prescribed rule, though she have not attained (the proper age)."

89. "(But) the maiden, though marriageable, should rather stop in (the father's) house until death, than that he should ever give her to a man destitute of good qualities."

90. "Three years let a damsel wait, though she be marriageable; but after that time let her choose for herself a bridegroom (of) equal (caste and rank)."

91. "If, being not given in marriage, she herself seeks a husband, she incurs no guilt, nor (does) he whom she weds."

92. "A maiden who choses for herself, shall not take with her any ornaments, given by her father or her mother, or her brother; if she carries them away, it will be theft."

93. "But he who takes (to wife) a marriageable damsel, shall not pay any nuptial fee to her father; for the (latter) will lose his dominion over her in consequence of his preventing (the legitimate result of the appearance of) her menses."

94. "A man, aged thirty years, shall marry a maiden of twelve who pleases him, or a man of twenty-four a girl eight years of age; if (the performance of) his duties would (otherwise) be impeded, (he must marry) sooner."

95. "The husband receives his wife from the gods, (he does not wed her) according to his own will; doing what is agreeable to the gods, he must always support her (while she is) faithful."

96. "To be mothers were women created, and to be fathers men; religious rites, therefore, are ordained in the Veda to be performed (by the husband) together with the wife."

97. "If, after the nuptial fee has been paid for a maiden, the giver of the fee dies, she shall be given in marriage to his brother, in case she consents."

98. "Even a Sudra ought not to take a nuptial fee, when he gives away his daughter; for he who takes a fee sells his daughter covering (the transaction by another name)."

99. "Neither ancients nor moderns who were good men have done such (a deed) that, after promising (a daughter) to one man, they gave her to another."

100. "Nor, indeed, have we heard, even in former creations, of such (a thing as) the covert sale of a daughter for a fixed price, called a nuptial fee."

101. "'Let mutual fidelity continue until death,' this may be considered as the summary of the highest law for husband and wife."

102. "Let man and woman, united in marriage, constantly exert themselves, that (they may not be) disunited (and) may not violate their mutual fidelity."

104. "After the death of the father and of the mother; the brothers, being assembled, may divide among themselves in equal shares the paternal (and the maternal) estate; for, they have no power (over it) while the parents live."

110. "If the eldest brother behaves as an eldest brother (ought to do), he (must be treated) like a mother and like a father; but if he behaves in a manner unworthy of an eldest brother, he should yet be honoured like a kinsman."

118. "But to the maiden (sisters) the brothers shall severally give (portions) out of their shares; each out of his share one-fourth part; those who refuse to give (it), will become outcasts."

120. "If a younger brother begets a son on the wife of the elder, the division must then be made equally; thus the law is settled."

121. "The representative (the son begotten on the wife) is not invested with the right of the principal (the eldest brother to an additional share); the principal (became) a father on the procreation (of a son by his younger brother); hence one should give a share to the (son begotten on the wife of the elder brother) according to the rule (stated above)."

122. "If there be a doubt, how the division shall be made, in case the younger son is born of the elder wife and the elder son of the younger wife."

123. "(Then the son) born of the first wife shall take as his additional share one (most excellent) bull; the next best bulls (shall belong) to those (who are) inferior on account of their mothers."

124. "But the eldest (son, being) born of the eldest wife, shall receive fifteen cows and a bull, the other sons may then take shares according to (the seniority of) their mothers; that is a settled rule."

125. "Between sons born of wives equal (in caste) (and) without (any other) distinction no seniority in right of the mother exists; seniority is declared (to be) according to birth."

126. "And with respect to the Subrahmanya (texts) also it is recorded that the invocation, (of Indra shall be made) by the first-born, of twins likewise, (conceived at one time) in the wombs (of their mothers) the seniority is declared (to depend) on (actual) birth."

127. "He who has no son may make his daughter in the following manner an appointed daughter (putrika, saying to her husband), 'The (male) child, born of her, shall perform my funeral rites.'"

128. "According to this rule Daksha, himself, lord of created beings, formerly made (all his female offspring) appointed daughters in order to multiply his race."

131. "But whatever may be the separate property of the mother, that is the share of the unmarried daughter alone; and the son of an (appointed) daughter shall take the whole estate of (his maternal grandfather) who leaves no son."

132. "The son of an (appointed) daughter, indeed, shall (also) take the estate of his(own) father, who leaves no (other) son; he shall (then) present two funeral cakes to his own father and to his maternal grandfather."

133. "Between a son's son and the son of an (appointed) daughter there is no difference, neither with respect to wordly matters nor to sacred duties; for their father and mother both sprang from the body of the same (man)."

134. "But if, after a daughter has been appointed, a son be born (to her father), the division (of the inheritance) must in that (case) be equal; for there is no right of primogeniture for a woman."

135. "But if an appointed daughter by accident dies without (leaving) a son, the husband of the appointed daughter may, without hesitation, take that estate."

publishing company, Inc.

118. "Out to the nation (sisters) the brethren shall generally give (portions) out of their abroad each out of his share one-fourth part those who refuse to give (it), will become opponents."

119. "If a younger brother begets a son on the wife of the elder, the division must then be made equally once the law is notified."

120. "The representative (the son begotten on the wife) is not invested with the rights of the principal (the eldest brother to an additional share) the principal (woman) either by procreation (or a son by his younger brother); hence one should give a share to the (son begotten on the wife of the other brother) according to the (manner stated above)."

122. "If there is a doubt, how the division shall be made, in case the younger son is born of the elder wife and the elder son of the younger wife."

123. "(Then the one) born of the first wife shall take on his eldest share one (more excellent) bull; the next best bulls (shall) belong to those (who are) inferior on account of their mothers."

124. "As the eldest (son, wife) born of the eldest wife, shall receive fifteen cows and a bull, the other sons may then take shares according to (the seniority of) their mothers that is a settled rule."

125. "Between sons born of wives equal (in caste) (and) without (any other) distinction on seniority in right of the mother unless seniority is declared (to be) according to birth."

126. "And with respect to the Brahmin wife (sister) also if is recorded that the invocation, (or rights shall be made) by the (brethren) of twice (Upanayana), (conceived at one time) in the womb (or their mothers) the seniority is declared (to depend) on (natural) birth."

127. "He who has no son may make his daughter in the following manner as appointed daughter (putrika, saying to her husband), 'The (male) child born of her, shall perform my funeral rites'."

128. "According to the rule (Devar, Niyog), lord of created beings, formerly made (all the female offspring) appointed daughters to wives to multiply his race."

129. "But whatever may be the separate property of the mother, that is the share of her unmarried daughter (alone) and the son of an (appointed) daughter shall take the whole estate of (his maternal grandfather) who leaves no son."

130. "The son of an (appointed) daughter, indeed, shall (also) take the estate of him(own) father, who leaves no (other) sent to whom (the) present the funeral cakes to his own father and to his maternal grandfather."

132. "Between a male son and the son of an (appointed) daughter there is no difference, neither with respect to words nearly nor to sacred duties for their father and nothing (both springing from the body of the same (man)."

134. "But if, after a daughter has been appointed, a son be born (to her father), the division (of the inheritance) must in that (case) to equals for there is no right of primogeniture for a woman."

135. "But if an appointed daughter by accident dies without (leaving) a son, the husband of the appointed daughter may, without hesitation, take that estate."

136. "Through that son whom (a daughter), either not appointed or appointed, may bear to (a husband) of equal (caste), his maternal grandfather (has) a son's son; he shall present the funeral cake and take the estate."

139. "Between a son's son and the son of a daughter there exists in this world no difference; for even the son of a daughter saves him (who has no sons) in the next world, like the son's son."

140. "Let the son of an appointed daughter first present a funeral cake to his mother, the second to her father, the third to his father's father."

143. "The son of a wife, not appointed (to have issue by another), and he whom (an appointed female, already) the mother of a son, bears to her brother-in-law, are both unworthy of a share, (one being) the son of an adulterer and (the other) produced through (mere) lust."

144. "Even the male (child) of a female (duly) appointed, not begotten according to the rule (given above), is unworthy of the paternal estate; for he was procreated by an outcast."

145. "A son (legally) begotten on such an appointed female shall inherit like a legitimate son of the body; for that seed and the produce belong, according to the law, to the owner of the soil."

146. "He who takes care of his deceased brother's estate and of his widow, shall, after raising up a son for his brother, give that property even to that (son)."

147. "If a woman (duly) appointed bears a son to her brother-in-law or to another (Sapinda), that (son, if he is) begotten through desire, they declare (to be) incapable of inheriting and to be produced in vain."

148. "The rules (given above) must be understood (to apply) to a distribution among sons of women of the same (caste; hear (now the law) concerning those begotten by one man on many wives of different (castes)."

149. "If there be four wives of a Brahmana in the direct order of the castes, the rule for the division (of the estate) among the sons of them is as follows:"

151. "Let the son of the Brahmani (wife) take three shares of the (remainder of the) estate, the son of the Kshatriya two, the son of the Vaisya a share and a half, and the son of the Sudra may take one share."

152. "Or let him who knows the law make ten shares of the whole estate, and justly distribute them according to the following rule:"

153. "The Brahmana (son) shall take four shares, the son of the Kshatriya (wife) three, the son of the Vaisya shall have two parts, the son of the Sudra may take one share."

154. "Whether (a Brahmana) have sons or have no sons (by wives of the twice-born castes), the (heir) must, according to the law, give to the son of a Sudra (wife) no more than a tenth (part of his estate)."

155. "The son of a Brahmana, a Kshatriya, and a Vaisya by a Sudra (wife) receives no share of the inheritance; whatever his father may give to him, that shall be his property."

156. "All the sons of twice-born men, born of wives of the same caste, shall equally divide the estate, after the others have given to the eldest an additional share."

135. "Through that son whom (a daughter), either not appointed or appointed, may bear to (a husband) or equal (mate), his natural grandfather (has) a son's heir shall present the funeral cake and take the estate."

136. "Between a man's son and the son of a daughter there exists in this world no difference for even the son of a daughter saves his (who has no sons) in the next world, like the man's son."

137. "Not the son of an appointed daughter's first present a funeral cake to his mother, the second to her father, the third to his father's father."

138. "The son of a wife, not appointed (to have issue by another), and he whom (an appointed female, already) the mother of a son, bears to her husband-in-law, are both ancestors of a share, (one being) the son of an ordinary act (the other) produced through (more) love."

144. "Even the male (child) of a female (only) appointed, not (action according to the rule (given above), is ancestor of the paternal estate for he was procreated by an eunuch."

145. "A son (legally) begotten on such an appointed female shall inherit like a legitimate son of the body for that was not the produce belonging to the lot, to the owner of the soil."

146. "In the whole core of his deceased brother's estate and of his wives, shall, after raising [illegible] son for his brother, give that property even to that (son)."

147. "[illegible] appointed bears a son to her brother-in-law or to another (husband), that (son, if he is) begotten through (another) is verily."

148. "The rules (given above) must be understood (to apply) to a wife[illegible] on the score of issue (not the case (where) her husband) is conversible there begotten by one son on any wives of different (castes)."

149. "If there is four wives of a Brahman in the direct order of the castes, the rule for the division (of the estate) among the sons of them is as follows:"

150. "Let the son of the Brahmani (wife) take three shares of the (remainder of the) estate, the son of the Kshatriya two, the son of the Vaisya a share and a half, and the son of the Sudra may take one share."

151. "Or let him who knows the law make ten shares of the whole estate, and justly distribute them according to the following rule:"

152. "The Brahmana (son) should take four shares, the son of the Kshatriya (wife) three, the son of the Vaisya should have two parts, the son of the Sudra may take one share."

153. "Whether (a Brahmana) have sons or have no sons (by wives of the inferior castes), the (heir) must, according to the law, give to the son of a Sudra (wife) no more than a tenth (part of his estate)."

154. "The son of a Brahmana, a Kshatriya, and a Vaisya by a Sudra (wife) receives no share of the inheritance whatever his father may give to him, that which he has properly."

155. "All the sons of twice-born men, born of wives of the same caste, should equally divide the estate, after the shares have been given to the eldest on additional share."

157. "For a Sudra is ordained a wife of his own caste only (and) no other; those born of her shall have equal shares, even if there be a hundred sons."

159. "The legitimate son of the body, the son begotten on a wife, the son adopted, the son made, the son secretly born, and the son cast off, (are) the six heirs and kinsmen."

160. "The son of an unmarried damsel, the son received with the wife, the son bought, the son begotten on a re-married woman, the son self-given, and the son of a Sudra female, (are) the six (who are) not heirs, (but) kinsmen."

162. "If the two heirs of one man be a legitimate son of his body and a son begotten on his wife, each (of the two sons), to the exclusion of the other, shall take the estate of his (antural) father."

164. "But when the legitimate son of the body divides the paternal estate, he shall give one-sixth or one-fifth part of his father's property to the son begotten on the wife."

165. "The legitimate son and the son of the wife (thus) share the father's estate; but the other ten become members of the family, and inherit according to their order (each later named on failure of those named earlier)."

166. "Him whom a man begets on his own wedded wife, let him know to be a legitimate son of the body (Aurasa), the first in rank."

167. "He who was begotten according to the peculiar law (or the Niyoga) on the appointed wife of a dead man, of a eunuch, or of one diseased, is called a son begotten on a wife (Kshetraga)."

168. "That (boy) equal (by caste) whom his mother or his father affectionately give, (confirming the gift) with (a libation of) water, in times of distress (to a man) as his son, must be considered as an adopted son (Datrima)."

170. "If (a child) be born in a man's house and his father be not known, he is a son born secretly in the house (Gudhotpanna), and shall belong to him of whose wife he was born."

171. "He whom (a man) receives as his son, (after he has been) deserted by his parents or by either of them, is called a son cast off (apaviddha)."

172. "A son whom a damsel secretly bears in the house of her father, one shall name of the son of an unmarried damsel (Kanina, and declare) such offspring of an unmarried girl (to belong) to him who weds her (afterwards)."

173. "If one marries, either knowingly or unknowingly, a pregnant (bride), the child in her womb belongs to him who weds her, and is called (a son) received with the bride (Sahodha)."

174. "If a man buys a (boy), whether equal or unequal (in good qualities), from his father and mother for the sake of having a son, that (child) is called a (son) bought (Kritaka)."

175. "If a woman abandoned by her husband, or a widow, of her own accord contracts a second marriage and bears (a son), he is called the son of a re-married woman (Paunarbhava)."

187. "Zero's Curse is original's wife if his son could only [illegible] other three of her shall have equal shares, even if there is a hundred sons."

188. "The [illegible] body, the son deputes or wife, the son [illegible], the son properly for, not the son next elf, (are) the six heirs not kinsmen."

189. "The son of an unmarried lawsuit, the sun received with the wife, the son bought, the son deputed on a premarital woman, the son [illegible] and the son of a Shire female, (are) the six (who are) not heirs. (not) kinsmen."

190. "If the two heirs of one man be a legitimate son of his body and a son deputed on his wife, each (of the two sons), to the exclusion of the other, shall take the estate of his (natural) father."

191. "But when the legitimate son of the body divides the paternal estate, he shall give one-sixth or one-fifth part of his father's property to the son deputed on the wife."

192. "The legitimate son and the son of the wife (thus) share the father's estate; but the other two become members of the family, and the heirs according to their order (each later named as failure of three-named earlier)."

193. "His when a man deputs on his own wedded wife, let his home be a legitimate son of the body (Aurgen), the first in rank."

194. "He who was deputed according to the peculiar law (or the Nipong) on the appointed wife of a dead man, of a manuch, or of one divorced, is called a son deputed on a wife (Kshetraja)."

195. "That (boy) equal (by caste) whom his mother or his father affectionately give, (confirming the gift) with (a libation of) water, in times of distress (to a man) an heir, must be considered as an adopted son (Dattaka)."

196. "If (a child) be born in a man's house and his father be not known, he is a son born secretly in the house (Gudhotpanna), and shall belong to his or those wife be was born."

197. "He whom (a man) received as his son, (after he has been) deserted by his parents or by either of them, is called a son cast off (Apaviddha)."

198. "A son whom a damsel secretly bears in the house of her father, one shall have of the son of an unmarried damsel (Kanina, and decisive) such offspring of an unmarried girl (to belong) to him who took her (afterwards)."

199. "If one marries, either knowingly or unknowingly, a pregnant (bride), the child is her womb folloms to his who were her, and is called (a son) received with the bride (Sahodha)."

200. "If a man buys a (boy), whether equal or unequal (in good qualities), from his father and mother for the sake of having a son, that (child) is called a (son) bought (Kritaka)."

201. "If a man abandoned by his parents, or a slave, or his own accepts a damsel married or unmarried and bears (a son), he is called the son of a premarried woman (Punarbhava)."

176. "If she be (still) a virgin, or one who returned (to her first husband) after leaving him, she is worthy to again perform with her second (or first deserted) husband the (nuptial) ceremony."

178. "The son whom a Brahmana begets through lust on a Sydra female is, (though) alive (parayan), a corpse (sava), and hence called a Parasava (a living corpse)."

179. "A son who is (begotten) by a Sudra on a female slave, or on the female slave of his slave, may, if permitted (by his father), take a share (of the inheritance); thus the law is settled."

180. "These eleven, the son begotten on the wife and the rest as enumerated (above), the wise call substitutes for a son, (taken), in order (to prevent) a failure of the (funeral) ceremonies."

183. "If among all the wives of one husband one have a son, Manu declares them all (to be) mothers of male children through that son."

190. "(If the widow) of (a man) who died without leaving issue, raises up to him a son by a member of the family (Sagotra), she shall deliver to that (son) the whole property which belonged to the (deceased)."

191. "But if two (sons), begotten by two (different men, contend for the property (in the hands) of their mother, each shall take, to the exclusion of the other, what belonged to his father."

192. "But when the mother has died, all the uterine brothers and the uterine sisters shall equally divide the mother's estate."

193. "Even to the daughters of those (daughters) something should be given, as is seemly, out of the estate of their maternal grandmother, on the score of affection."

194. "What (was given) before the (nuptial) fire, what (was given) on the bridal procession, what was given in token of love, and what was received from her brother, mother, or father, that is called the sixfold property of a woman."

195. "(Such property), as well as a gift subsequent and what was given (to her) by her affectionate husband, shall go to her offspring, (even) if she dies in the lifetime of her husband."

196. "It is ordined that the property (of a woman married) according to the Brahma, the Daiva, the Arsha, the Gandharva, or the Pragapatya rite (shall belong) to her husband alone, if she dies without issue."

197. "But it is prescribed that the property which may have been given to a (wife) on an Asura marriage or (one of the) other blamable marriages, shall go) to her mother and to her father, if she dies without issue."

198. "Whatsoever property may have been given by her father to a wife (who has co-wives of different castes), that the daughter (of the) Brahmani (wife) shall take, or that (daughter's issue)."

199. "Women should never make a hord from (the property of) their families which is common to many, nor from their own (husband's particular) property without permission."

200. "The ornaments which may have been worn by women during their husbands' lifetime, his heir shall not divide; those who divide them become outcasts."

publishing company, inc.

136. "If she do (still) a virgin, or one too returned (to her first husband) after leaving him, she is worthy to again perform with her second (or first deserted) husband the (nuptial) ceremony."

137. "She (can when a Freeman begets through lust on a Syrian female [though] alive (partum), a corpse (cave), and hence called a Parnassa (a living corpse)."

138. "A son who is (begotten) by a Suite on a female slave, or on the female slave of his slave, may, if permitted [by his father], take a share (of the inheritance); thus the law is settled."

139. "Those eleven, the son begotten on the wife and the rest as enumerated (above), the wise call substitutes for a son, (namely,) in order (to prevent) a failure of the (funeral) ceremonies."

140. "If among all the wives of one husband one have a son, then declare that all (to be) mothers of male children through that son."

141. "(If the widow) of (a man) who died without leaving issue, [obtain up to him a son by a member of his family (Sagotra), she shall deliver to that (man) the whole property which belonged to the (deceased)."

142. "But if two (sons), begotten by two different men, contend for the property (in the hands) of their mothers, each shall take, to the exclusion of the other, what belonged to his father."

143. "But when the mother has died, all the uterine brothers and the uterine sisters shall equally divide the mother's estate."

144. "Even to the daughters of those (daughters) should the (property) be given, as it [were], out of the estate of their maternal grandmother, on the score of affection."

145. "What (was given) before the (nuptial) fire, what (was given) on the bridal procession, what was given in token of love, and what was received from her brother, mother, or father, that is called the sixfold property of a woman."

146. "(Such property), as well as a gift subsequent and what was given (to her) by her affectionate husband, shall go to her offspring, (even) if she died in the lifetime of her husband."

147. "It is ordained that the property (of a woman married according to the Brahma, the Daiva, the Arsha, the Gandharva, or the Prajapatya rite (shall belong) to her husband alone; if she die without issue."

148. "But it is prescribed that the property which may have been given to a (wife) on an Asura marriage or (one of the) other Pisachalike marriages, shall go to her mother and to her father, if she die without issue."

149. "Whatsoever property may have been given by her father to a wife [or two or three of different castes], that the daughter (of the) Brahmani (wife) shall take, or that (daughter's issue)."

150. "Women should never cook a bowl from (the property of) their father, which is common to many, nor from their own [husband's, particular] property without [evidence]."

151. "The ornaments which may have been worn by women during their husbands' lifetime, are built not divisible among those who divide them become outcastes."

203. "If the eunuch and the rest should somehow or other desire to (take) wives, the offspring of such among them as have children is worthy of a share."

217. "A mother shall obtain the inheritance of a son (who dies) without leaving issue, and, if the mother be dead the paternal grandmother shall take the estate."

219. "A dress, a vehicle, ornaments, cooked food, water, and female (slaves), property destined for pious uses or sacrifices, and a pasture-ground, they declare to be indivisible."

230. "On women, infants, men of disordered mind, the poor and the sick, the king shall inflict punishment with a whip, a cane, or a rope and the like."

232. "Fogers of royal edicts, those who corrupt his ministers, those who slay women, infants, or Brahmanas, and those who serve his enemies, the king shall put to death."

237. "For violating a Guru's bed, (the mark of) a female part shall be (impressed on the forehead with a hot iron); for drinking (the spirituous liquor called)Sura, the sign of a tavern; for stealing (the gold of a Brahmana), a dog's foot; for murdering a Brahmana, a headless corpse."

239. "Such (persons) who have been branded with (indelible) marks must be cast off by their paternal and maternal relations, and receive neither compassion nor a salutation; that is the teaching of Manu."

## CHAPTER X.

4. "The Brahmana, the Kshatriya and the Vaisya castes (varna) are the twice-born ones, but the fourth, the Sudra, has one birth only; there is no fifth (caste)."

5. "In all castes (varna) those (children) only which are begotten in the direct order on wedded wives, equal (in caste and married as) virgins, are to be considered as belongings to the same caste (as their fathers)."

6. "Sons, begotten by twice-born men on wives of the next lower castes, they declare to be similar (to their fathers, but) blamed on account of the fault (inherit) in their mothers."

7. "Such is the eternal law concerning (children) born of wives on degree lower (than their husbands); know (that)the following rule (is applicable) to those born of women two or three degrees lower."

8. "From a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

9. "From a Kshatriya and the daughter of a Sudra springs a being, called Ugra, resembling both a Kshatriya and a Sudra, ferocious in his manners, and delighting in cruelty."

10. "Children of a Brahmana by (women of) the three (lower) castes, of a Kshatriya by (wives of) the two (lower) castes, and of a Vaisya by (a wife of) the one caste (below him) are all six called base-born (apasada)."

publishing company inc.

CHAPTER X.

4. "The Brahmans, the Kshatriya and the Vaisya castes (varna) are the twice-born ones, but the fourth, the Sudra, has one birth only - there is no fifth (caste)."

5. "In all castes (varna) those (children) only which are begotten in the direct order on wedded wives, equal (in caste and married) virgins, are to be considered as belonging to the same caste (as their fathers)."

6. "Sons, begotten by twice-born men on wives of the next lower castes, they declare to be similar (to their fathers). (But) those first placed on account of the fault (inherit) in their mothers."

7. "Such is the eternal law concerning (children) born of wives or degree lower (than their husbands)! Know (that) the following rule (is applicable) to those born of women two or three degrees lower."

8. "(For a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

9. "From a Kshatriya and the daughter of a Sudra springs a being, called Ugra, resembling both a Kshatriya and a Sudra, ferocious in his manners, and delighting in cruelty."

10. "Children of a Brahmana by (women of) the three (lower) castes, of a Kshatriya by (wives of) the two (lower) castes, and of a Vaisya by (a wife of) the one caste (below him) are all six called base-born (apasada)."

11. "(The children) of a Nishada by a Sudra woman, (and) in the inverse order (of a Sudra by a Nishada woman), a dog's race; for purchasing a Pukkasa, a beggarwoman corpse."

12. "Such (persons) who have been branded with (indelible) marks must be cast off by their paternal and maternal relations, and receive neither compensation nor a equivalent that is the teaching of Manu."

13. "For violating a Guru's bed, (the mark of) a female part shall be (impressed on the forehead with a hot iron); for drinking (the spirituous liquor called)Sura, the sign of a tavern-for stealing,(the gold of a Brahman), a dog's foot; for murdering a Brahman, a headless corpse."

14. "For violating a Guru's bed, (the mark of) a female part shall be (impressed on the forehead with a hot iron); for drinking (the spirituous liquor called)Sura, the sign of a tavern-for stealing,(the gold of a Brahman), a dog's foot; for murdering a Brahman, a headless corpse."

15. "Such (persons) who have been branded with (indelible) marks must be cast off by their paternal and maternal relations, and receive neither compensation nor a equivalent that is the teaching of Manu."

16. "Children of a Brahmana by (women of) the three (lower) castes, of a Kshatriya by (wives of) the two (lower) castes, and of a Vaisya by (a wife of) the one caste (below him) are all six called base-born (apasada)."

17. "From a Kshatriya and the daughter of a Sudra springs a being, called Ugra, resembling both a Kshatriya and a Sudra, ferocious in his manners, and delighting in cruelty."

18. "From a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

19. "(For a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

20. "Such is the eternal law concerning (children) born of wives or degree lower (than their husbands)! Know (that) the following rule (is applicable) to those born of women two or three degrees lower."

21. "Sons, begotten by twice-born men on wives of the next lower castes, they declare to be similar (to their fathers). (But) those first placed on account of the fault (inherit) in their mothers."

22. "For violating a Guru's bed, (the mark of) a female part shall be (impressed on the forehead with a hot iron); for drinking (the spirituous liquor called)Sura, the sign of a tavern-for stealing,(the gold of a Brahman), a dog's foot; for murdering a Brahman, a headless corpse."

23. "Such (persons) who have been branded with (indelible) marks must be cast off by their paternal and maternal relations, and receive neither compensation nor a equivalent that is the teaching of Manu."

24. "Children of a Brahmana by (women of) the three (lower) castes, of a Kshatriya by (wives of) the two (lower) castes, and of a Vaisya by (a wife of) the one caste (below him) are all six called base-born (apasada)."

25. "From a Kshatriya and the daughter of a Sudra springs a being, called Ugra, resembling both a Kshatriya and a Sudra, ferocious in his manners, and delighting in cruelty."

26. "From a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

27. "(For a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

28. "Such is the eternal law concerning (children) born of wives or degree lower (than their husbands)! Know (that) the following rule (is applicable) to those born of women two or three degrees lower."

29. "Sons, begotten by twice-born men on wives of the next lower castes, they declare to be similar (to their fathers). (But) those first placed on account of the fault (inherit) in their mothers."

30. "For violating a Guru's bed, (the mark of) a female part shall be (impressed on the forehead with a hot iron); for drinking (the spirituous liquor called)Sura, the sign of a tavern-for stealing,(the gold of a Brahman), a dog's foot; for murdering a Brahman, a headless corpse."

31. "Such (persons) who have been branded with (indelible) marks must be cast off by their paternal and maternal relations, and receive neither compensation nor a equivalent that is the teaching of Manu."

32. "Children of a Brahmana by (women of) the three (lower) castes, of a Kshatriya by (wives of) the two (lower) castes, and of a Vaisya by (a wife of) the one caste (below him) are all six called base-born (apasada)."

33. "From a Kshatriya and the daughter of a Sudra springs a being, called Ugra, resembling both a Kshatriya and a Sudra, ferocious in his manners, and delighting in cruelty."

34. "From a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

35. "(For a Brahmana with the daughter of a Vaisya is born (a son) called an Ambashtha, with the daughter of a Sudra a Nishada, who is also called a Parasava."

36. "Such is the eternal law concerning (children) born of wives or degree lower (than their husbands)! Know (that) the following rule (is applicable) to those born of women two or three degrees lower."

37. "A mother shall obtain the inheritance of a son (who dies) without leaving issue, and, if the mother be dead the paternal grandmother shall take the estate."

38. "A horse, a vehicle, ornaments, cooked food, water, and female (slaves), property destined for pious uses or sacrifices, and a pasture-ground, they declare to be indivisible."

39. "Of women, infants, men of disordered mind, the poor and the sick, the king shall inflict punishment with a whip, a cane, or a rope and the like."

40. "Figure of royal edicts, those who corrupt his ministers, those who slay women, infants, or Brahmans, and those who serve his enemies, the king shall put to death."

11. "From a Kshatriya by the daughter of a Brahmana is born (a son called) according to his caste (gati) a Suta; from a Vaisya by females of the royal and the Brahmana (castes) spring a Magadha and a Vaideha."

12. "From a Sudra are born an Ayogave, a Kshattri, and a Kandala, the lowest of men, by Vaisya, Kshatriya, and Brahmana females, (sons who owe their origin to) a confusion of the castes."

13. "As an Ambashtha and an Ugra, (begotten) in the direct order on (women) one degree lower (than their husbands) are declared (to be), even so are a Kshattri and a Vaidehaka, though they were born in the inverse order of the castes (from mothers one degree higher than the fathers)."

14. "Those sons of the twice-born, begotten on wives of the next lower castes, who have been enumerated in due order, they call by the name Anantaras (belonging to the next lower caste), on account of the blemish (inherent) in their mothers."

15. "A Brahmana begets on the daughter of an Ugra an Avrita, on the daughter of an Ambashtha an Abhira, but on a female of the Ayogava (caste) a Dhigvana."

16. "From a Sudra spring in the inverse order (by females of the higher castes) three base-born (sons, apasada), an Ayogava, a Kshattri, and a Kandala, the lowest of men."

17. "From a Vaisya are born in the inverse order of the castes a Magadha and a Vaideha, but from a Kshatriya a Suta only; these are three other base-born ones (apasda)."

18. "The son of a Nishada by a Sudra female becomes a Pukkasa by caste (gati), but the son of a Sudra by a Nishada female is declared to be a Kukkutaka."

19. "Moreover, the son of a Kshattri by an Ugra female is called a Svapaka; but one begotten by a Vaidehaka on an Ambashtha female is named a Vena."

20. "Those (sons) whom the twice-born beget on wives of equal caste, but who, not fulfilling their sacred duties, are excluded from the Savitri, one must designate by the appellation Vratyas."

21. "But from a Vratya (of the) Brahmana (caste) spring the wicked Bhriggakantaka, the Avantya, the Vantadhana, the Pushpadha, and the Saikha."

22. "From a Vratya (of the) Kshatriya (caste), the Ghalla, the Malla, the Likkhivi, the Nata, the Karana, the Khasa, and the Dravide."

23. "From a Vratya (of the) Vaisya (caste) are born a Sudhanvan, an Akarya, A Karusha, a Vijanman, a Maitra, and a Satvata."

24. "By adultery (committed by persons) of (different) castes, by marriages with women who ought not to be married, and by the neglect of the duties and occupations (prescribed) to each, are produced (sons who owe their origin) to a confusion of the castes."

25. "I will (now) fully enumerate those (sons) of mixed origin, who are born of Anulomas and of Pratilomas, and (thus) are mutually connected."

11. "Five x Kabatriya by the daughter of a Brahmana is born (a
son called) according to his caste (jati) a Sutat from a Vaisya by
females of the royal and the Brahmana (caste) sprung a Magadha and
a Vaideha."

12. "Five a Sutra are born an Ugrya, a Kabattri, and a Kandala,
the lowest of men, by Vaisya, Kabatriya, and Brahmana females, (sons
who are their origin to) a confusion of the castes."

13. "As an Ambastha and an Ugra, (begotten) in the direct order
on (women) one degree lower (than their husbands) are declared (to be),
even so are a Kabattri and a Vaidehaka, though they were born in the
inverse order of the castes (from mothers one degree higher than the
fathers)."

14. "Those sons of the twice-born, begotten on wives of the next
lower castes, who have been enumerated in due order, they call by the
name Anantara (belonging to the next lower caste), on account of the
blemish (inherent) in their mothers."

15. "A Brahmana begets on the daughter of an Ugra an Avrita, on
the daughter of an Ambastha an Abhira, but on a female of the Ayogava
(caste) a Dhigvana."

16. "From a Sudra spring in the inverse order (by females of the
higher castes) three twice-born (sons, namely), an Ayogava, a Kabattri,
and a Vaidehi, the lowest of men."

17. "From a Vaidya are born in the inverse order of the castes
a Magadha and a Vaideha, but from a Kabatriya a Suta only these are
three other twice-born (sons)."

18. "The son of a Nishada by a Sudra female becomes a Pukkasa by
caste (jati), but the son of a Sudra by a Nishada female is declared
to be a Sudrantya."

19. "Moreover, the son of a Kabattri by an Ugra female is called
a Swapaka but one begotten by a Vaidehika on an Ambastha female is
named a Vena."

20. "Those (sons) whom the twice-born beget on wives of equal caste,
but who, not fulfilling their sacred duties, are excluded from the Savitri,
are made Vratyas by the appellation Vratyas."

21. "But from a Vratya (of the) Brahmana (caste) springs the wicked
Bhrigvankantaka, the Avantya, the Vaitabhika, the Pushpadha, and the
Saikha."

22. "From a Vratya (of the) Kabatriya (caste), the Malla, the
Malla, the Lichchhavi, the Nata, the Karana, the Khasa, and the Dravida."

23. "From a Vratya (of the) Vaisya (caste) are born a Sudhanvan,
an Akarya, a Karusha, a Vijanman, a Maitra, and a Satvata."

24. "By adultery (committed by persons) of (different) castes,
by marriages with women who ought not to be married, and by the neglect
of the duties and occupations (prescribed) to each, are produced (sons
who are their origin) to a confusion of the castes."

25. "I will (now) fully enumerate those (sons) of mixed origin,
who are born of Anulomas and of Pratilomas, and (thus) are mutually
connected."

26. "The Suta, the Vaidehaka, the Kandala, that lowest of mortals, the Magadha, he of the Kshattri caste (gati), and the Ayogava."

27. "These six (Pratilomas) beget similar races (barna) on women of their own (caste), they (also) produce (the like) with females of their mother's caste (gati), and with females (of) higher ones."

28. "As a (Brahmana) begets on (females of) two out of the three (twice-born castes a son similar to) himself, (but inferior) on account of the lower degree (of the mother), and (one equal to himself) on a female of his own race, even so is the order in the case of the excluded (races, vahya)."

29. "Those (six mentioned above) also beget, the one on the females of the other, a great many (kinds of) despicable (sons), even more sinful than their (fathers), and excluded (from the Aryan community, vahya)."

30. "Just as a Sudra begets on a Brahmana female a being excluded (from the Aryan community), even so (a person himself) excluded procreates with (females of) the four castes (varna, sons) more (worthy of being) excluded (than he himself)."

31. "But men excluded (by the Aryans, vahya), who approach females of higher rank, beget races (varna) still more worthy to be excluded, low men (hina) still lower races, even fifteen (in number)."

32. "A Dasyu begets on an Ayogava (woman) a Sairandhra, who is skilled in adorning and attending (his master), who, (though) not a slave, lives like a slave, (or) subsists by snaring (animals)."

33. "A Vaideha produces (with the same) a sweet-voiced Maitreyaka, who, ringing a bell at the appearance of dawn, continually praises (great) men."

34. "A Nishada begets (on the same) a Margava (or) Dasa, who subsists by working as a boatman, (and) whom the inhabitants of Aryavarta call a Kaivarta."

35. "Those three base-born ones are severally begot on Ayogava women, who wear the clothes of the dead, are wicked, and eat reprehensible food."

36. "From a Nishada springs (by a woman of the Vaideha caste) a Karavara, who works in leather; and from a Vaidehaka (by women of the Karavara and Nishada castes), an Andhra and a Meda, who dwell outside the village."

37. "From a Kandala by a Vaideha woman is born a Pandusopaka, who deals in cane; from a Nishada (by the same) an Ahindika."

38. "But from a Kandala by a Pukkasa woman is born the sinful Sopaka, who lives by the occupations of his sire, and is ever despised by good men."

39. "A Nishada woman bears to a Kandala a son (called) Antyavasayin, employed in burial-grounds, and despised even by those excluded (from the Aryan community)."

40. "These races, (which originate) in a confusion (of the castes and) have been described according to their fathers and mothers, may be known by their occupations, whether they conceal or openly show themselves."

41. "Six sons, begotten (by Aryans) on women of equal and the next lower castes (Anantara), have the duties of twice-born men; but all those born in consequence of a violation (of the law) are, as regards their duties, equal to Sudras."

47. "To Sutas (belongs) the management of horses and of chariots; to Ambashthas, the art of healing; to Vaidehakas, the service of women; to Magadhas, trade."

## CHAPTER XI.

5. "If a man who has a wife weds a second wife, having begged money (to defray the marriage expenses, he obtains) no advantage but sensual enjoyment; but the issue (of his second marriage belongs) to the giver of the money."

36. "Neither a girl, nor a (married) young woman, nor a man of little learning, nor a fool, nor a man in great suffering, nor one uninitiated, shall offer an Agnihotra."

54. "Penances, therefore, must always be performed for the sake of purification, because those whose sins have not been expiated, are born (again) with disgraceful marks."

55. "Killing a Brahmana, drinking (the spirituous liquor called) Sura, stealing (the gold of a Brahmana), adultery with a Guru's wife, and associating with such (offenders), they declare (to be) mortal sins (mahapataka)."

59. "Carnal intercourse with sisters by the same mother, with (unmarried) maidens, with females of the lowest castes, with the wives of a friend, or of a son, they declare to be equal to the violation of a Guru's bed."

60. "Slaying kine, sacrificing for those who are unworthy to sacrifice, adultery, selling oneself, casting off one's teacher, mother, father, or son, giving up the (daily) study of the Veda, and neglecting the (sacred domestic) fire."

61. "Allowing one's younger brother to marry first, marrying before one's elder brother, giving a daughter to, or sacrificing for (either brother)."

62. "Defiling a damsel, usury, breaking a vow, selling a tank, a garden, one's wife, or child."

64. "Superintending mines (or factories) of any sort, executing great mechanical works, injuring (living) plants, subsisting on (the earnings of) one's wife, sorcery (by means of sacrifices), and working (magic by means of) roots, (and so forth)."

67. "Stealing grain, base metals, or cattle, intercourse with women who drink spirituous liquor, slaying women, Sudras, Vaisyas, or Kshatriyas, and Atheism, (are all) minor offences, causing loss of caste (Upapataka)."

88. "For destroying the embryo (of a Brahmana, the sex of which was) unknown, for slaying a Kshatriya or a Vaisya who are (engaged in or) have offered a (Vedic) sacrifice, or a (Brahmana) woman who has bathed after temporary uncleanness (Atreyi), he must perform the same penance."

## CHAPTER XI.

89. "Likewise for giving false evidence (in and important cause) for passionately abusing the teacher, for stealing a deposit, and for killing (his) wife or his friend."

103. "By these penances a twice-born man may remove the guilt incurred by a theft (of gold); but he may atone for connexion with a Guru's wife by the following penances."

104. "He who has violated his Guru's bed, shall, after confessing his crime, extend himself on a heated iron bed, or embrace the red-hot image (of a woman); by dying he becomes pure."

139. "For killing adulterous women of the four castes, he must give, in order to purify himself, respectively a leathern bag, a bow, a goat, or a sheep."

164. "The lunar penance has been declared to be the expiation for stealing men and women, and (for wrongfully appropriating) a field, a house, or the water of wells and cisterns."

170. "By means of these penances, a twice-born man may remove the guilt of theft; but the guilt of approaching women who ought not to be approached (agamya), he may expiate by (the following) penances."

171. "He who has had sexual intercourse with sisters by the same mother, with the wives of a friend, or of a son, shall perform the penance, prescribed for the violation of a Guru's bed."

172. "He who has approached the daughter of his father's sister, (who is almost equal to) a sister, (the daughter) of his mother's sister, or of his mother's full brother, shall perform a lunar penance."

173. "A wise man should not take as his wife and of these three; they must not be wedded because they are (sapinda) relatives, he who marries (one of them), sinks low."

176. "A Brahmana who unintentionally approaches a woman of the Kandala or of (any other) very low caste, who eats (the food of such persons) and accepts (presents from them) becomes an outcast; but (if he does it) intentionally, he becomes their equal."

177. "An exceedingly corrupt wife let her husband confine to one apartment, and compel her to perform the penance which is prescribed for males in cases of adulterty."

178. "If, being solicited by a man (of) equal (caste), she (afterwards) is again unfaithful, them a Krikkhra and a lunar penance are prescribed as the means of purifying her."

184. "A female slave shall upset with her feet a pot filled with water, as if it were for a dead person; (his Sapindas) as well as the Samanodaka shall be impure for a day and a night."

191. "Let him not dwell together with the murderers of children, with those who have returned evil for good, and with the slayers of suppliants for protection or of women, though they may have been purified according to the sacred law."

## CHAPTER XII.

7. "Taking what has not been given, injuring (creatures) without the sanction of the law, and holding criminal the three kinds of (wicked) bodily action."

89. "Likewise for giving false evidence (in any important cause) for passionately desiring the snooper, for stealing a deposit, and for killing (his) wife & his friend."

126. "By these penances a twice-born man may remove the guilt incurred by a theft (of gold)[1] but he may atone for connexion with a Guru's wife by the following penances."

126. "He who has violated his Guru's bed, shall, after cauterizing his organ, extend himself on a heated iron bed, or embrace the red-hot image (of a woman)[1] by dying to decease pure."

128. "For killing adulterous women of the four castes, he must give, in order to purify himself, respectively a leathern bag, a cow, a goat, or a sheep."

129. "The lunar penance has been declared to be the expiation for stealing rice and wheat, and (for wrongfully appropriating) a field, a horse, or the water of wells and cisterns."

130. "By means of these penances, a twice-born man may remove the guilt of theft; but the guilt of approaching women who ought not to be approached (change)[1] he may expiate by (the following) penances."

131. "He who has had sexual intercourse with sisters by the same mother, with the wives of a friend, or of a son, shall perform the penance prescribed for the violation of a Guru's bed."

132. "He who has approached the daughter of his father's sister, (who is almost equal to) a sister, (the daughter) of his mother's sister, or of his mother's full brother, shall perform a lunar penance."

133. "A wise man should not take as his wife and of those three (of his mother) who are (sapinda) relatives, be who marries (due of them)[1] sinks low."

134. "A Brahmana who unintentionally approaches a woman of the Ambaṣṭha or of (any other) very low caste, who eats (the food of such persons) and accepts (presents from them) becomes an outcast; but (it be less it) intentionally, he becomes their equal."

135. "An exceedingly corrupt wife let her husband confine to one apartment, and compel her to perform the penance which is prescribed for males in cases of adultery."

136. "If, being militated by a man (of) equal (caste), she (afterwards) is again unfaithful, then a Krikkhra and a lunar penance are ordered as the means of purifying her."

137. "A female slave shall upset with her feet a pot filled with water, as if it were for a good person; (his Seplaban) as well as the Sannyasins shall to lepro for a day and a night."

138. "Let his not dwell together with the mistress of children, with those who have returned evil for good, and with the slayers of Brahmanas for protection or of women, though they may have been purified according to the sacred law."

## CHAPTER XII.

1. "Eating what has not been given, injuring (creatures) without the sanction of the lord, and holding criminal the three kinds of (wicked) bodily actions."

60. "He who has associated with outcasts, he who has approached the wives of other men, and he who has stolen the property of a Brahmana become Brahmarakshasas."

67. "For stealing a deer or an elephant a wolf, for stealing a horse a tigar, for stealing fruit and roots a monkey, for stealing a woman a bear, for stealing water a black-white cuckoo, for stealing vehicles a camel, for stealing cattle a he-goat."

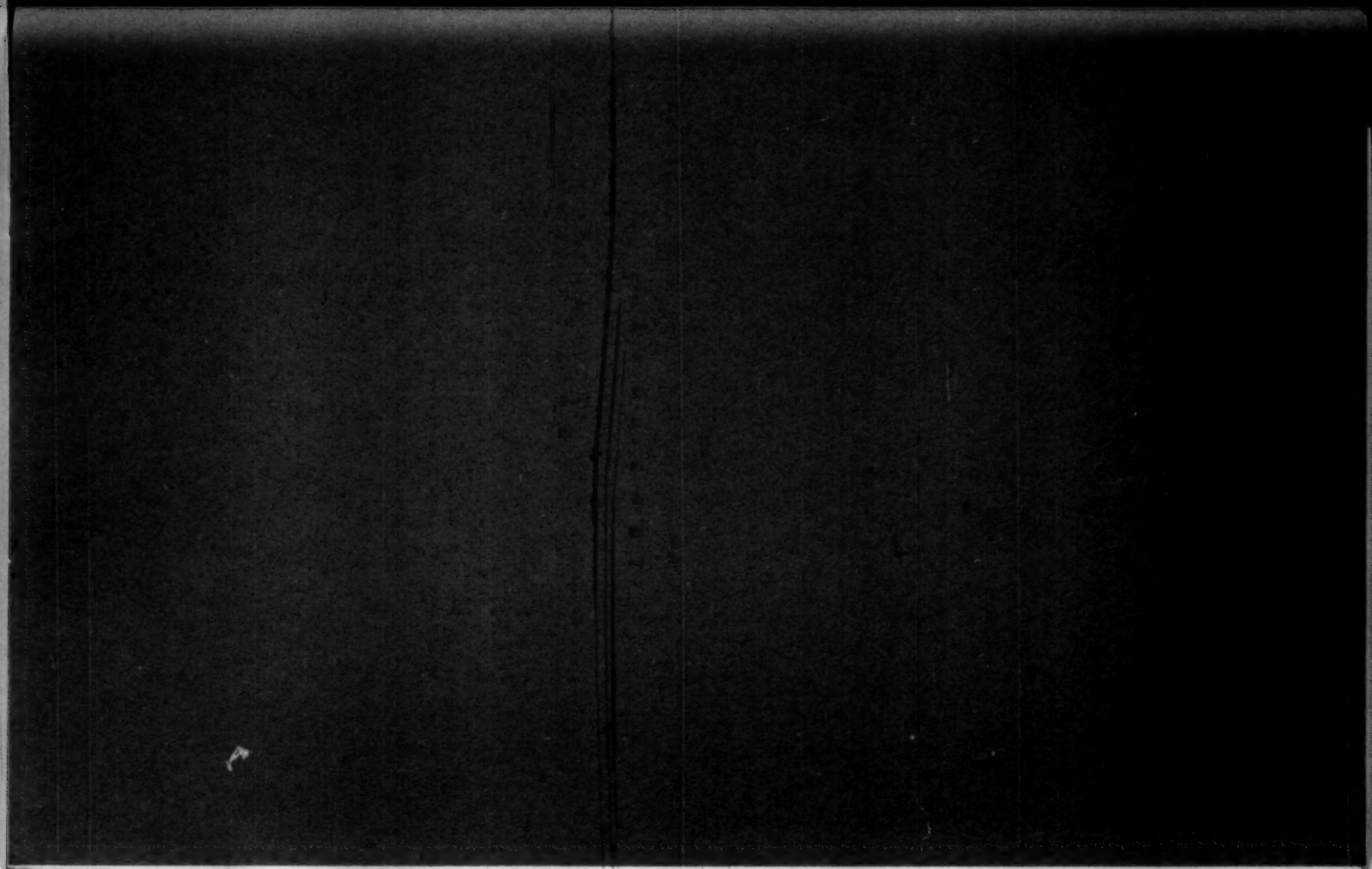
68. "That man who has forcibly taken away any kind of property belonging to another, or who has eaten sacrificial food (of) which (no portion) has been offered, inevitably becomes an animal."

69. "Women, also, who in like manner have committed a theft, shall incur guilt; they will become the females of those same creatures (which have been enumerated above)."

# THE

# HINDU CODE

andronicus publishing company, inc.



# THE HINDU CODE

## CHAPTER I

### OPERATION AND EXTENT OF THE HINDU CODE.

1. (1) "This Code may be cited as the Hindu Code."

(2) "It extends to the whole of British India:

And except as provided by this Code or by any other law or custom for the time being in force, the rules herein contained are applicable to all Hindus and such other persons as may have adopted them."

(3) "The term "Hindu" in this connection includes not only those who are Hindu by religion but also those who are commonly known as such."

2. "In the absence of anything appearing to the contrary the natives of each of the following provinces are governed by the schools of law noted against them:—

(i) Bengal and Assam . . Dayabhag, supplemented by the Mitakshara."

(ii) United and Central Mitakshara, Provinces.

(iii) Mithila . . Mitakshara, supplemented by Vivadchintamani and Vidvadratnakar.

(iv) Bombay Presidency, Mitakshara, modified by the Mayukh, Berar and Guzerat.

(v) Madras Presidency Mitakshara, modified by (1) Smriti Chandrika, (2) Parasar Madhav (3) Virmitrodai.

(vi) The Punjab . . Customary law, supplemented by the Mitakshara.

3. (1) "Hindu Law is personal, and a person has the right to carry it with him upon his migration to another place in India, where a different system of law prevails;

(2) But on the change of his domicile there is no presumption that he had necessarily carried his own law with him, since he has then the option of following his own law, or renouncing it and adopting that of his new domicile;

(3) A person found resident in a given place will be presumed to be subject to the law of that place, unless he shews that in spite of the change of his domicile he had not abandoned the law of his origin."

Explanation 1.—"The 'law of origin' means and includes the law established in the original domicile of the ancestors of the family, and not merely of any members thereof, as determined by the caste, race and language of the family at the time of its migration."

Explanation 2.—"In order to shew that in spite of his migration a person has continued to follow the law of his origin the evidence given must be such as suffices to prove a special or family custom regarding its observance."

Lawyers publishing company, inc.

# THE NINTH CODE

## CHAPTER I

### CHARACTER AND CONTENT OF THE NINTH CODE.

1. (1) "This Code may be cited as the Hindu Code."

(2) "It extends to the whole of British India

And except as provided by this Code or by any other law at present in force, the rules hereto mentioned are applicable to all the time being in force, the rules hereto mentioned are applicable to all Hindus, and such other persons as may have adopted them."

(3) "The term "Hindu" in this connection includes not only those who are Hindu by religion but also those who are commonly known as such."

2. "In the absence of anything repugnant to the contrary the rulings of each of the following provinces are governed by the opposite of law noted against them:—

(i) Bengal and Assam . . Inheritance, supplemented by the Mitakshara."

(ii) United and Central Provinces. Primogeniture.

(iii) Mithila . . Mitakshara, supplemented by Viramitrodaya and Vivadachintamani.

(iv) Bombay Presidency, Mitakshara, modified by the Mayukh, Nirnay and Dayabhag.

(v) Madras Presidency Mitakshara, modified by (1) Smriti Chandrika.

(2) Parasar Madhav (3) Viramitrodai.

(vi) The Punjab . . Customary law, supplemented by the Mitakshara.

3. (1) "Hindu law is personal, and a person has the right to carry it with him upon his migration to another place in India, where a different system of law prevails

(2) But on the change of his domicile there is no presumption that he had necessarily carried his own law with him, since he has the option of following his own law, or renouncing it and adopting that of his new domicile."

(3) A person found resident in a given place will be presumed to be resident in the original domicile of the ancestors of the family, unless he has at that place, unless he shows that in spite of the change of his domicile he had not abandoned the law of his origin."

Explanation 1.—"The 'law of origin' means and includes the law established in the original domicile of the ancestors of the family, and not merely of any members thereof, as determined by the caste, race and language of the family at the time of its migration."

Explanation 2.—"In order to show that in spite of his migration a person has continued to follow the law of his origin the evidence given must be such as suffices to prove a special or family custom governing the question."

4. (1) "Hindu Law, as such, ceases to bind a Hindu upon his conversion to an alien faith; and in the absence of anything appearing to the contrary, he will be presumed to follow the law applicable to his new religion; but it is open to him to continue to follow Hindu Law as a matter of custom so far as it is consistent with his new religion and with the rights of the other members of his family."

(2) "The question whether a convert continues to follow the old law or elects to follow the new law is a question of intention to be decided in each case with due regard to the course of his conduct, habit and mode of life."

5. "No Court shall enforce any law or usage having the force of law inflicting on a Hindu forfeiture of rights or property, or in any way imparting or affecting any right of inheritance by reason of his renouncing or having been excluded from the communion of the Hindu religion, or being deprived of caste."

6. "Subject to the provisions hereinbefore contained, non-Hindus, whether Hindu converts or others, residing in a Hindu country, and adopting the custom of the Hindus, may become subject to such of the incidents of Hindu Law as are implied in the custom they have adopted."

## CHAPTER II

## CUSTOMARY LAW.

7. "Custom is an established practice at variance with the general law."

8. "A custom varying the general law may be a general, local, tribal, or family custom."

Explanation 1.—"A general custom includes a custom common to any considerable class of persons."

Explanation 2.—"A custom which is applicable to a locality, tribe, sect, or a family is called a special custom."

9. (1) "Custom has the effect of modifying the general personal law, but it does not override the statute law unless it is expressly saved by it."

(2) "Such custom must be ancient, uniform, certain, peaceable, continuous, and compulsory."

10. "No custom is valid, if it is illegal, immoral, unreasonable, or opposed to public policy."

11. (1) "He who relies upon custom varying the general law, must plead and prove it."

(2) "Custom must be established by clear and unambiguous evidence."

12. "A custom may be proved or disproved in any of the following ways:—

(1) Judgments, orders and decrees relating thereto,

(2) entries in any public document made—

(a) by a public servant in the discharge of his official duty, or

publishing company inc.

CHAPTER II

CUSTOMARY LAW.

7. "Custom is an established practice at variance with the general law."

8. "A custom varying the general law may be a general, local, tribal, or family custom."

Explanation 1.—"A general custom includes a custom common to any considerable class of persons."

Explanation 2.—"A custom which is applicable to a locality, tribe, sect, or a family is called a special custom."

9. (1) "Custom has the effect of MODIFYING the general personal law, but it does not abrogate the statute law unless it is expressly saved by it."

(2) "Such custom must be ancient, uniform, certain, reasonable, consistent, and compulsory."

10. "No custom is valid, if it is illegal, immoral, unreasonable, or opposed to public policy."

11. (1) "No one relies upon custom varying the general law, must plead and prove it."

(2) "Custom must be established by clear and unambiguous evidence."

12. "A custom may be proved or disproved in any of the following ways—

(1) Judgments, orders and decrees relating thereto;

(2) entries in any public document made—

(a) by a public servant in the discharge of his official duty, or

(b) by any other person in the performance of a duty especially enjoined on him by the law of the country in which the public document is kept,

(3) a published work dealing therewith,

(4) any transaction by which the custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence,

(5) particular instances in which the custom was claimed, recognized, exercised, or in which its existence was asserted, disputed or departed from,

(6) opinions of--

(a) persons knowing of its existence or non-existence,

(b) persons likely to have known of the custom, given before any controversy as to the custom had arisen, and who are either dead or cannot be called without unreasonable expense or delay,

(c) a number of persons,

(d) experts,

(7) previous deposition of witnesses examined inter partes who cannot be called for reasons stated in Clause 6 (b),

(8) admissions of persons adversely affected thereby,

(9) acts and conduct which make the existence or non-existence of the custom highly probable or improbable."

13. "Usage is a practice at variance with the general law, and differs from custom in that it need not possess the antiquity, uniformity or notoriety of custom, provided it is well known and acquiesced in by the community to whom it is made applicable."

## CHAPTER III

## MARRIAGE.

### Customary Marriage.

14. "Marriage is an alliance between a man and a woman recognized by law."

15. "A contract to marry cannot be enforced by specific performance or an injunction, but a party suffering loss thereby may recover damages for a breach of contract."

16. "Every man has a right to marry, and such right is not affected by infancy or infirmity."

17. "Polygamy is lawful, but polyandry is unlawful except to the extent permitted by custom."

18. "No prescribed ceremony is necessary to constitute marriage, provided that if any ceremony is customary and regarded by the caste as essential, then it must be performed."

Explanation 1.—"The ceremony of Saptapadi is necessary to complete a marriage performed according to the orthodox rites, and that of Vivah Hom is also usually performed, but its non-performance does not invalidate a marriage, if otherwise completed."

Explanation 2.—"A marriage celebrated with due ceremony is not rendered invalid by reason of the fact that a party thereto was then an outcast."

Explanation 3.—"Cohabitation is not necessary to complete marriage."

19. "The marriage expenses of all members of an undivided family are a legitimate charge on its property."

20. "Every marriage is subject to the following conditions namely:—

(a) That the parties thereto must not be within the prohibited degree of relationship; and

(b) that if the parties thereto are Dwijas, they ordinarily must be of the same caste."

Explanation 1.—"The prohibited degree of relationship for the purpose of marriage is regulated by custom."

Explanation 2.—"A person shall be deemed to be within the prohibited degree of relationship whose marriage is opposed to common morality."

21. "A marriage may be rendered invalid for any of the following reasons:—

(1) because the parties were related within the prohibited degree,

(2) because they were of different non-intermarriageable castes,

(3) because they did not observe the essential ceremonies,

(4) because their marriage was brought about by force or fraud."

22. "A marriage brought about by force or fraud may be avoided by the party affected thereby."

23. "A marriage may be avoided on the ground of the husband's impotency, or either party's imbecility, but it cannot be avoided for their infancy or other incapacity which rendered them incapable of understanding the nature of their marital obligations and their consequence upon their individual rights, or their own mental or physical incapacity to discharge them."

24. "On its completion the marriage becomes indissoluble and is not subject to judicial separation or divorce for the adultery, cruelty or other misconduct of either party."

25. "The tie of marriage is not dissolved by the apostacy, degradation or loss of caste of either party."

17. "Polygamy is lawful; but polyandry is unlawful except to the extent permitted by custom."

18. "No prescribed ceremony is necessary to constitute marriage, provided that if any ceremony is customarily used regarded by the courts as essential, then it must be performed."

*Explanation 1.*—"The ceremony of baptism is necessary to complete a marriage performed according to the original rites, and that of Vivah. Nor is also usually performed, but its non-performance does not invalidate a marriage, if otherwise completed."

*Explanation 2.*—"A marriage celebrated with due ceremony is not rendered invalid by reason of the fact that a party thereto was an infant."

*Explanation 3.*—"Consummation is not necessary to complete marriage."

19. "The marriage expenses of all members of an undivided family are a legitimate charge on its property."

20. "Every marriage is subject to the following conditions namely:—

(a) That the parties thereto must not be within the prohibited degree of relationship; and

(b) That the parties thereto are both above they ordinarily must be of the same caste."

*Explanation 1.*—"The prohibited degree of relationship for the purpose of marriage is regulated by custom."

*Explanation 2.*—"A person shall be deemed to be within the prohibited degree of relationship whose marriage is opposed to common morality."

21. "A marriage may be rendered invalid for any of the following reasons:—

(1) because the parties were related within the prohibited degree;

(2) because they were of different non-intermarriageable castes;

(3) because they did not observe the essential ceremonies;

(4) because their marriage was brought about by force or fraud."

22. "A marriage brought about by force or fraud may be avoided by the party affected thereby."

23. "A marriage may be avoided on the ground of the husband's impotency, or either party's imbecility, but it cannot be avoided for their relapse or other incapacity which rendered them incapable of understanding the nature of their marital obligations and their consequences upon their individual rights, or their own mental or physical incapacity to discharge them."

24. "On the completion the marriage becomes indissoluble and is not subject to judicial separation or divorce for the adultery, cruelty or other misconduct of either party."

25. "The tie of marriage is not dissolved by the apostacy, derelation or loss of caste of either party."

26. "Where remarriage is lawful, the wife may remarry, if her husband, after leaving her, has not been heard of for seven years, by those who would naturally have heard of him if he had been alive."

27. "The following rights and obligations arise upon marriage:--

(a) As to the husband--

1. he is his wife's natural guardian during her minority;

2. he is entitled to her conjugal society;

3. he is bound to maintain her;

4. he cannot divorce her, unless he is allowed to do so by custom;

5. should she predecease him, he is entitled to inherit her property.

6. he has no right over her Stridhan, which he may, however use in a time of great distress."

(b)"As to the wife--

1. she is bound to live with her husband, unless he is guilty or misconduct;

2. she is entitled to retain her Stridhan as her separate property;

3. she is entitled to sue, and is liable to be sued, in respect of her Stridhan, as if she were a feme sole;

4. she cannot divorce her husband, unless she is allowed to do so by custom;

5. should her husband predecease her, she is entitled to inherit his separate property: otherwise, she has the right of maintenance and residence in the family dwelling-house;

6. she has no right over her husband's property during his lifetime beyond the right of maintenance and residence."

28. (1) "In a case relating to conjugal rights, there must be, except as otherwise expressly provided, proof of the performance of marriage and its validity."

(2) "In other cases, marriage may be presumed from continuous cohabitation, conduct and repute;

(3) "Such presumption of marriage cannot be rebutted by more proof of its improbability."

(4) "When the fact of marriage is proved, it will be presumed that it was performed--

(a) in the approved form,

(b) with due ceremonies, and was otherwise a valid marriage, and that

(c) it continued during the lifetime of either party."

Statutory Civil Marriage.

29. "It is lawful for a Hindu to marry a person who professes any of the following religions, that is to say, the Hindu, Buddhist, Sikh, Jain or Christian religion."

30. "Nothing herein affects a marriage otherwise valid under any law or custom then in force."

## CHAPTER IV

## AFFILIATION AND LEGITIMACY.

31. (1) "Children may be natural or adopted. Of these the former may be legitimate or illegitimate;

(2) A legitimate child is one begotten by a person on his lawfully married wife;

(3) An illegitimate child is one begotten by him on one who is not lawfully married to him;

A lawfully begotten son is called Auras putra.

(4) An adopted son is one legally adopted by or to a man as his son;

A son taken in adoption is called Dattak putra or the adopted son."

32. "The legitimacy of a child born of a married wife of a person is conclusively presumed in the following cases, namely:

(a) where it was born during the continuance of the marriage, or

(b) within 280 days after its dissolution, the mother remaining unmarried, unless it is proved that the parties to the marriage had no access to each other at any time when it could have been begotten."

33. "Every child, whether legitimate or illegitimate, possesses the right of maintenance against its father or his estate: Provided that in a family subject to the Bengal School, such right, in the case of an illegitimate child, ceases upon its attaining majority."

## CHAPTER V

## ADOPTION.

34. (1) "Adoption is a former recognition of a person as the son of another."

(2) "No adoption is valid unless it is made in conformity with law."

(3) "Any Hindu, not having a son, grandson, or great-grandson alive at the time of adoption, may adopt a son to himself, and his wife or widow may with his consent do the same."

35. "No one can adopt a son unless at the time of adoption he had no living son, grandson, or great-grandson."

36. "Save as provided by any law for the time being in force, every Hindu has the right to adopt a son provided—

(a) he has attained the age of discretion;

(b) has no son, legitimate or adopted, or having a son the latter was married under the Special Marriage (Amendment) Act, 1923, and has no other son, grandson, or great-grandson in the male line then living;

(c) is possessed of sound mind; and

(d) is not suffering from any mental or physicial disability which disqualifies him from inheritance."

Explanation 1.—"The facts that the adopter is a bachelor or a widower, or that his wife is pregnant or opposes the adoption are immaterial to the validity of adoption."

Explanation 2.—"A son mentioned in Clause (d) does not include a son who suffers from any of the disabilities which disqualify him from inheritance."

37. "A wife may adopt a son to her husband with his express consent."

38. (1) "The widow may adopt a son to her deceased husband with his express authority;

Provided that, in places not subject to the Bengal and Benares schools, she may also adopt without such authority in accordance with the following rules:

(2) (a) In the Dravid country, she may make an adoption after consulting thereon all her husband's sapindas, and with the assent of all or the majority of them, theretoo: provided that if only some of them assent to the adoption made, it will still be valid if it is proper and was made in bona fide performance of a religious duty;

(b) Provided also, that where the family is joint, the consent of the father-in-law, and in his absence, of its managing member woulb be sufficient for an adoption, if made in their own lifetime.

(3) (a) In the Mahrashtra, where the widow succeeds to her husband who died a separated member from his family, she may adopt without his consent which is presumed.

(b) But if her husband died a member of an individed family then she may only adopt with the consent of his undivided co-parceners, in which case, in lieu of such consent, the consent of persons mentioned in Clause (2) (b) will be sufficient, and the provisions of Clause (2) (a) mutatis mutandis shall then apply.

Explanation 1.—"The consent herein beforementioned must be free and not one induced by fraud or corruption."

Explanation 2.—"Where the majority of co-parceners or Sapindas, as the case may be, have assented to an adoption, it will be presumed that their assent was bona fide."

Exception 1.—"A widow in Mithila can make no adoption to her husband with or without his consent."

Exception 2.—"In the Punjab, the validity of an adoption by a widow depends upon her compliance with the tribal and territorial custom."

38. "Save as provided by any law for the time being in force, every Hindu has the right to adopt, unless prevented—

(a) by his attained the age of discretion;

(b) has no sane, legitimate or adopted, or having a son the latter was married under the Special Marriage (Amendment) Act, 1923, and has no other son, grandson, or great-grandson in the male line then living;

(c) is possessed of sound mind and

(d) is not suffering from any mental or physical disability which disqualifies him from inheritance."

Explanation 1.—"The fact that the adoptor is a widower, or that his wife is pregnant or expects the adoption are immaterial to the validity of adoption."

Explanation 2.—"A son mentioned in Clause (b) does not include a son who suffers from any of the disabilities which disqualify him from inheritance."

39. "A wife may adopt a son to her husband with his express consent."

39. (1) "The widow may adopt a son to her deceased husband with his express authority:

Provided that, in places not subject to the Dayá and Benares schools, she may also adopt without such authority in accordance with the following rules:

(2) (a) In the Dravid country, she may make an adoption after consulting those of her husband's sapindas, and with the assent of all or the majority of them, therefore provided that it only some of them assent to the adoption made, it will still be valid if it is proper and was made in face like performance of a religious duty:

(b) Provided also, that where the family is joint, the consent of the father-in-law, and in his absence, of its managing member must be sought for an adoption, it made in their own villages.

(3) (a) In the Maharatta, where the widow succeeds to her husband who died a separated member from his family, she may adopt without his consent which is presumed.

(b) But if her husband died a member of an undivided family then she may only adopt with the consent of his undivided co-parceners, in which case, in lieu of such consent, the consent of persons mentioned in Clause (2) (b) will be sufficient, and the provisions of Clause (2) (c) mutatis mutandis shall then apply."

Explanation 1.—"The consent herein before mentioned must be free and not one induced by fraud or corruption."

Explanation 2.—"Where the majority of co-parceners or Sapindas, as the case may be, have consented to an adoption, it will be presumed that their consent was bona fide."

Exception 1.—"A widow in Mithila can make no adoption to her husband with or without his consent."

Exception 2.—"In the Punjab, the validity of an adoption by a widow depends upon her compliance with the tribal and territorial custom."

39. "The widow is bound to strictly obey any directions given by her husband touching an adoption to him."

40. "The authority by the husband to adopt may be verbal or in writing but if it is in writing of a non-testamentary nature, it must be stamped and registered."

41. (1) "The authority of the husband to adopt must be liberally, though reasonably, construed, so as to advance the purpose he had in view."

(2) "Such authority may be general or limited, but it will be ineffectual if it is illegal, vague or void."

(3) "The authority to adopt can only be conferred on, and used by, the wife."

(4) "He who confers the authority may revoke it at any time before it is used."

42. (1) "Where the authority to adopt devolves or is conferred on two or more widows, in the absence of any express direction to the contrary, it may be used by the senior widow then living at the time of adoption."

(2) "But no co-widow can make an adoption without the consent of the other co-widow in whom by inheritance from her son the whole estate had become vested."

43. "An adoption brought about by coercion, undue influence, fraud, misrepresentation, or mistake, or otherwise than by the free consent of the parties thereto, is voidable at the instance of the party wronged, but subject to the rights of other parties, it may be confirmed."

44. "The widow's power to adopt becomes incapable of execution on the vesting or her husband's estate in another by inheritance:

Provided that when the estate of the husband has vested in his co-widows by inheritance to him, an adoption made by one of them will not be invalid by reason of the fact that it has the effect of divesting them."

45. "A boy may be given in adoption by his natural father, or with his consent by the mother, except where such consent cannot be obtained owing to his death or disability, provided that he had not at any time expressly or impliedly prohibited her from so doing."

Explanation.—"Where the gift and acceptance of the boy to be adopted is completed by the parents in a manner required by law, the fact that they had in their unavoidable absence, delegated the performance of any of its ceremonies to a near relation on their behalf, will not render the adoption invalid."

46. "A boy must possess the following qualifications to be eligible for adoption, namely:

(1) except in the case of Shudras, he must belong to the same caste as the parties giving and taking him in an adoption;

(2) he must not be an orphan;

(3) he must not have been adopted by any other person;

(4) except in Bombay, he must not be married;

(5) under the Bengal and Benares Schools, he must not have been invested with the sacred thread;

39. "The widow is bound to strictly obey any directions given by her husband touching an adoption to him."

40. "The authority by the husband to adopt may be varied or is written but if it is in writing of a non-testamentary nature, it must be registered and registered."

41. (1) "The authority of the husband to adopt must by likewise, though revocably, executed, be as to advance the purpose he had in view."

(2) "Such authority may be general or limited, but it will be ineffectual if it is illegal, void or void."

(3) "The authority to adopt one only be conferred on, and used by, the wife."

(4) "He who confers the authority may revoke it at any time before it is used."

42. (1) "Where the authority to adopt depends or is conferred on two or more widows, in the absence of any express direction to the contrary, may be used by the senior widow living at the time of adoption."

(2) "But no co-widow can make an adoption without the consent of the other co-widow in view by inheritance from her son the whole estate had become vested."

43. "An adoption brought about by coercion, undue influence, fraud, misrepresentation, or mistake, or otherwise than by the free consent of the parties thereto, is voidable at the instance of the party wronged, but subject to the rights of other parties, it may be confirmed."

44. "The widow's power to adopt becomes inoperable or revocable on the vesting of her husband's estate in another by inheritance."

Provided that when the estate of the husband has vested in his widows by inheritance to him, on adoption made by one of them will not be invalid by reason of the fact that it be the effect of divesting them."

45. "A boy may be given in adoption by his natural father, or with his consent by the mother, except where such consent cannot be obtained owing to his death or disability, provided that he has not at any time separately or lawfully prohibited her from so doing."

Explanation.—"Where the gift and acceptance of the boy to be adopted is completed by the parents in a manner required by law, the fact that they had in their unavoidable absence, delegated the performance of any of its ceremonies to a near relation or their behalf, will not render the adoption invalid."

46. "A boy must possess the following qualifications to be eligible for adoption, namely:

(1) except in the case of Sonless, he must belong to the same caste as the person giving and taking him in adoption;

(2) he must not be an orphan;

(3) he must not have been adopted by any other person;

(4) except in Sonless, he must not be married

(5) under the Dayal and Sonless Schools, he must not have been married with the sacred thread;

(6) in Dravid, he may be adopted after his investiture with the sacred thread, provided he is not married;

(7) except in Dravid, if the parties are Dwijas, he should not be the sister's son daughter's son, and mother's sister's son of the adopter:

Provided that in the Bombay Presidency, and the Punjab, and amongst Jains, he may be adopted at any age, even though older than his adopter, is married and has children."

Exception.—"Nothing in Clauses (5) and (7) applies to Shudras."

47. (1) "No adoption is complete without the corporeal delivery of the adoptee to his adopter with a declaration by the person delivering him, that he delivers him in adoption, and with that of the adopter, that he so accepts him:

(2) provided, that they have also performed such other act or ceremonies as may be required by law, or are customary to that end:

(3) provided further, that if the parties thereto belong to any of the regenerate castes, and do not belong to the same Gotra, they must also perform the ceremony of Datt Homa;

(4) but non-performance of the Datt Homa or of the further ceremonies mentioned in Clause (2) will not invalidate an adoption made as provided in Clause (1) unless their performance is regarded by the caste as of the essence of the ceremony of adoption."

Explanation.—"No delivery and its acceptance is valid unless the parties thereto were capable of understanding the nature of the act and its effect upon their rights."

48. (1) "No adoption may be set aside for a mere irregularity or for non-observance of a form not essential to its validity."

(2) In particular and without prejudice to the generality of the foregoing rule, it may not be set aside on any of the following grounds, namely:-

(a) That the adopted son was the eldest, the youngest or the only son of his father;

(b) that he was given in adoption after his investiture with the sacred thread;

(c) that the adoptee was older than the adopter.

(d) that the adoption was made during pollution; or

(e) that the adoption was made by an untonsured widow."

49. "An adoption is irrevocable, but the rights thereby acquired may be limited or postponed to any reasonable extent warranted by custom."

50. "A son may be given in adoption on condition that he shall be the son of both the natural and the adoptive fathers. Such a son is called the Dvamushyayan."

51. "A Dvamushyayan is entitled to inherit in both the families of his natural and adoptive fathers."

52. (1) "He who relies upon an adoption must prove it."

(2) Where an adoption has the effect of disinheriting the natural heirs, it must be proved by such cogent evidence as is sufficient to prove its factum and validity and not merely its probability; due regard being had to all the circumstances, including—

(a) its antecedent and attendant probability,

(b) the existence of a writing,

(c) the conduct of the parties before and since the alleged adoption, and

(d) its publicity;

and where the adopter is an illiterate widow—

(e) the assent, intention and inclination of her husband,

(f) the receipt by her of independent advice, and

(g) the effect of the adoption upon her rights.

(3) Provided that, where an adoption has been acted upon for a considerable time without dispute, the Court may, upon proof of its factum, presume its validity."

53. (1) "A person whose adoption is for any reason void, acquires no right as an adopted son.

(2) And where a gift is made to such person, described as an adopted son, the adoption failing, the gift also fails unless it was intended as a gift to a persona designata, and was not a condition of the gift."

54. (1) "The adoption of a person has, from the date of his adoption, the effect of determining all his rights and liabilities in the natural family, but not so as to divest him of any property which may have vested in him prior to that date;

(2) but no adoption severs the natural relationship of the adopted son with his natural family so as to exempt him from the prohibition which would otherwise bind him as regards marriage and adoption."

55. "In the absence of a natural son, an adopted son acquires all the rights and is subject to all the liabilities of a natural son in the family of his adoptive father, including the right of lineal and collateral inheritance."

56. (1) "Save as otherwise provided in Clause (3), the rights of an adopted son arise at adoption:

(2) An adopted son cannot dispute an alienation made by the adoptive father before his adoption; and on his adoption he would be bound by an alienation or contracts made by his adoptive father or any other manager of the family to the same extent as a natural son.

(3) The rights of a son adopted by a widow do not relate back to the death of her husband, except in the following cases, and to the following extent, namely:—

(a) His adoption relates back to the death of her husband for the purpose of continuing a family trading partnership of which he was a member;

(b) he divests the coparcenary interest of the husband which has become vested in another by survivorship;

(c) he may set aside an antecedent gift of her husband's property made by his widow, and in the case of other alienations, he may dispute their property if unsupported by legal necessity or benefit."

57. (1) "Except in the case of a Shudra, the rights of an adopted son are, on the birth of an auras son, limited as follows:

(2) He loses all rights to the performance of religious ceremonies;

(3) he is not entitled to succeed to an impartible estate in preference to the auras son;

(4) his right of inheritance, in other cases, is reduced to a fourth share of the natural son."

58. "No suit lies for the specific performance of an agreement to adopt, the breach of which may, however, be redressed by damages."

59. (1) "An invalid adoption cannot be validated by a subsequent consent, though the person so consenting may be estopped from denying it; but there can be no estoppel unless there is such a course of acquiesence in treating the adopted boy as a member of the adopted family that it will be impossible to restore him to his original position in the natural family.

(2) Mere acquiesence or even presence at the adoption does not necessarily amount to an estoppel."

Customary Adoption.

60. (1) "A Jain adoption requires no other ceremony beyond that of the gift and its acceptance;

(2) the Jain widow is entitled to make an adoption without the express or implied authority of her husband;

(3) a person of any age, whether he is an orphan, or is married and has children of his own, and irrespective of his relationship to the adopter, is eligible for adoption."

61. (1) "The husband or the wife may adopt a Kritrim son to himself or herself either jointly or separately in accordance with the following rules:—

(a) The adopter must have no son, grandson or great-grandson living at the time of adoption;

(b) the adoptee may be adult and married;

(c) both the adoptee and his parents must consent to the adoption;

(d) the husband or the wife may adopt jointly, or they may each adopt a separate son;

(e) the son so adopted is the son of the adopter, even if she be the wife or the widow;

(f) the wife or the widow may adopt a son in her own right and without the assent of her husband or his kinsmen;

(g) any relation or stranger may be so adopted;

(2) such an adoption can only be made in the Mithila Province and the districts adjoining it, in the Punjab, and elsewhere if permitted by custom."

62. "A Kritrim adoption is subject to the following incidents:

(1) the adoption is concluded by contract, no ceremony being necessary;

57. (1) "Except in the case of a Quaker, the rights of an adopted son are as the birth of an actual son, limited as follows

(2) He loses all rights to the performance of religious ceremonial

(3) He is not entitled to succeed to an hereditable estate in preference to the actual son.

(4) His right of inheritance, in other cases, is reduced to a fourth share of the natural son."

58. "No suit lies for the specific performance of an agreement to adopt, the breach of which can, however, be redressed by damages."

59. (1) "An invalid adoption cannot be validated by a subsequent consent, though the parties so consenting may be estopped from denying it; but there can be no estoppel unless there is such a course of conduct as to create or imply the adopted boy as a member of the adopted family that it will be impossible to restore him to his original position in the natural family."

(2) Mere acquiescence or even presence at the adoption does not necessarily amount to an estoppel."

## Customary Adoption.

60. (1) "A Jain adoption requires no other ceremony except that of the gift and the acceptance

(2) the Jain widow is entitled to make an adoption without the express or implied authority of her husband;

(3) a person of any age, whether he is an orphan, or is married and has children of his own, and irrespective of his relationship to the adopter, is eligible for adoption."

61. (1) "The husband or the wife may adopt a Kshatria son to himself or herself either jointly or separately in accordance with the following rules:—

(a) The adopter must have no son, grandson or great-grandson living at the time of adoption

(b) the adoptee may be adult and married;

(c) both the adoptee and his parents must consent to the adoption;

(d) the husband or the wife may adopt jointly or they may each adopt a separate son;

(e) the son so adopted in the son of the adopter, even if she be the wife or the widow

(f) the wife or the widow may adopt a son in her own right and without the consent of her husband or his kindred

(g) any relation or stranger may be so adopted.

(2) such an adoption can only be made in the Mithila Province and the Districts adjoining it, in the Punjab, and elsewhere if permitted by custom."

(2) there is no restriction as to the qualification of the adoptee except that he should be of the same caste as the adopter;

(3) for the purpose of marriage his Sapinda relationship in the family of his adopter extends only to three degrees;

(4) he does not assume the surname of his adoptive father."

63. "A Kritrim son becomes entitled to the following rights in consequence of his adoption:

(1) He succeeds both to his father and the adopter;

(2) he acquires no relationship with his adopter's other relations;

(3) he does not succeed to his adopter's collaterals;

(4) if adopted by the wife or the widow, he succeeds to her exclusive property having no right in her husband's estate."

64. "Nothing in this chapter shall be deemed to invalidate an adoption otherwise authorized by custom."

## CHAPTER VI

## MINORITY AND GUARDIANSHIP.

### Of Minority.

65. (1) "In matters relating to marriage, divorce, dower, and adoption, a person attains the age of majority on completion of the sixteenth year: otherwise, except in the cases hereinafter provided, he attains it on completion of the eighteenth year."

(2) Every minor of whose person or property a guardian has been appointed or declared under the Guardians and Wards Act, and every minor whose property is under the superintendence of a Court of Wards, attains his majority on completion of his twenty-first year."

66. "'Guardian' means a person having the care of the person of another, or of his property, or of both."

67. (1) "A guardian may be natural, testamentary, or one appointed by the Court.

(2) A natural guardian is one who is entitled under the personal law, to which he is subject, to act as the guardian by virtue of his relationship to the minor.

(3) A testamentary guardian is one so appointed by the father in his Will for his children.

(4) The Court may appoint or declare a guardian in accordance with the provisions of the Guardians and Wards Act or the High Court might do so in the exercise of its inherent power. The guardian so appointed may be called the certificated guardian."

(3) there is no restriction as to the qualifications of the adopter except that he should be of the same creed as the adoptee

(3) for the purpose of marriage his English relationship in the family of his adopter extends only to third degrees

(4) he does not assume the surname of his adoptive father."

63. "A Maltese can become entitled to the following rights in consequence of his adoption:

(1) He succeeds both to his father and the adopter

(2) he acquires no relationship with his adopter's other relations

(3) he does not succeed to his adopter's collaterals

(4) if adopted by the wife or the widow, he succeeds to her exclusive property having no right in her husband's estate."

64. "Nothing in this chapter shall be deemed to invalidate an adoption otherwise authorized by custom."

CHAPTER XI

"MINORITY AND GUARDIANSHIP."

Of Minority.

65. (1) "In matters relating to marriage, divorce, lunacy, and adoption, a person attains the age of majority on completion of the eighteenth year; otherwise, except in the cases hereinafter provided, he attains it on completion of the eighteenth year."

(2) Every minor of whose person or property a guardian has not otherwise validly been appointed under Maltese law, and every minor whose property is under the superintendence of a Court of Wards, attains his majority on completion of his twenty-first year."

66. "'Guardian' means a person having the care of the person of another, or of his property, or of both."

67. (1) "A guardian may be natural, testamentary, or one appointed by the Court."

(2) A natural guardian is one who is entitled under the personal law to act as such for is subject, to act as guardian by virtue of his relationship to the minor.

(3) A testamentary guardian is one so appointed by the father in his will for his children.

(4) The Court may appoint or declare a guardian in accordance with the provisions of the Guardians and Wards Act or the High Court rights as to the exercise of its inherent power. The guardian so appointed may be called the controlled guardian."

Of Natural Guardians.

68. "The following relations are the natural guardians of the person and property of a minor in the order mentioned below, namely:—(a) The father; (b) the mother; (c) the paternal relations; (d) the maternal relations."

69. (1) "Neither remarriage, conversion nor loss of caste is any disqualification to act as a guardian.

(2) Where a Hindu child becomes converted to an alien faith it is for the Court to consider whether it would be for the welfare of the child that it should be restored to its parents."

70. "Where the minor is a member of a joint family governed by the Mitakshara law, the father, and in his absence, the elder brother or other senior male member of the family, is entitled to the management of the whole coparcenary property including the minor's interest."

71. (1) "A Hindu father may, by his Will, made orally or in writing, appoint one or more persons to act as a guardian or guardians of his children after his death; and in doing so he may exclude even the mother from her natural guardianship. The mother, however, has not a similar power to appoint a guardian by Will, though the Court may pay regard to her wishes so expressed.

(2) Where more than one person are appointed guardians, unless the contrary is expressed or necessarily implied, it is competent to any of them to accept the office though the others may disclaim, or die.

(3) Any guardian accepting office cannot resign at will."

72. (1) "The husband is the lawful guardian of his minor wife and is entitled to require her to live with him irrespective of her infancy;

(2) after the husband's death the guardianship of her person devolves on the husband's relations in preference to her paternal relations."

73. (1) "The natural guardian of a minor's property possesses the power to transfer any portion of the minor's property in case of necessity or for the benefit of the estate.

(2) Provided that where the property comprises a family trade, the guardian has the power to transfer or pledge the property and credit of the firm for the ordinary purposes of that trade."

74. "A person, not a dejure guardian, who being interested in the minor, assumes charge of his property for purpose of management, possesses the same rights of alienation thereof as a dejure guardian."

75. "The guardian of a minor may enter into a contract or compromise on behalf of his ward, and do all other acts which are reasonable and proper for the protection of his property and for his benefit."

76. "The guardian may bind the minor in the following cases:

(1) By entering into a contract charging the minor's estate;

(2) by acknowledging his debt before it is barred by time."

77. "A guardian cannot contract in the name of a ward, so as to impose on him a personal liability."

of Natural Guardians.

69. "The following persons are the natural guardians of the person and property of a minor in the order mentioned below, namely—(a) the father; (b) the mother; (c) the paternal relations; (d) the maternal relations."

70. (1) "Neither remarriage, conversion nor loss of sanity or disqualification to act as a guardian.

(2) Where a Hindu child becomes converted to an alien faith it is for the Court to consider whether it would be for the welfare of the child that it should be restored to its parents."

71. "Where the minor is a member of a joint-family governed by the Mitakshara law, the father, and in his absence, the elder brother or other senior member of the family, is entitled to the management of the whole coparcenary property including the minor's interest."

72. (1) "A Hindu father may, by his Will, made orally or in writing, appoint one or more persons to act as a guardian or guardians of his children after his death and in doing so may exclude even the mother from her natural guardianship. The mother, however, has not a similar power to appoint a guardian by Will, though the Court may pay regard to her wishes so expressed.

(2) Where more than one person are appointed guardians, unless the contrary is expressed or necessarily implied, it is competent to any of them to accept the office though the others may decline, or die.

(3) Any guardian appointing others cannot revoke at will."

73. (1) "The husband is the lawful guardian of his minor wife and is entitled to custody for her to live with him irrespective of her interest or the husband's relations in preference to her paternal relations."

(2) After the husband's death the guardianship of her person devolves on the husband's relations to her paternal relations."

74. (1) "The natural guardian of a minor's property possesses the power to transfer any portion of the minor's property in case of necessity or for the benefit of the estate.

(2). Provided that where the property comprises a family trade, the guardian has the power to transfer or pledge the property and credit of the firm for the ordinary purposes of that trade."

75. "A de-facto guardian, who being interested in the minor, assumes charge of his property for purpose of management, possesses the same rights of alienation thereof as a de-jure guardian."

76. "The guardian of a minor may enter into a contract or compromise on behalf of his ward, and do all other acts which are reasonable and proper for the protection of his property and for his benefit."

77. "The guardian may bind the minor in the following manner

(1) By entering into a contract affecting the minor's estate

(2) by acknowledging his debt before it is barred by time."

78. "A guardian cannot contract in the name of a ward, so as to impose on him a personal liability."

Explanation.—"Nothing herein applies to the acknowledgment of liability made by the guardian on behalf of his ward or a liability arising by way of indemnity or otherwise than under the contract."

78. (1) "A transfer made by the guardian may be avoided by the minor, if it is wholly or partially unsupported by necessity, or was not for the benefit of the estate.

(2) Provided that in the case of partial necessity or benefit, the alienee is entitled to restitution of the money paid for such necessity or benefit.

(3) Provided further, that where the bulk of the consideration is supported by legal necessity, the Court may, instead of setting aside the transfer, order payment to the transferor of such consideration as is not supported by necessity or benefit."

79. "A guardian cannot bind his ward by an act not purported to be done on his behalf."

80. "A transaction entered into with a minor is only voidable at the option of the minor."

81. (1) "A minor is bound by the result of a suit to which he was a party, if he was properly represented therein.

(2) Provided that if any decree be passed on a compromise, such compromise must be sanctioned by the Court.

(3) Provided further that no decree obtained by consent has any effect against the minor unless it was consented to by his natural or certificated guardians.

(4) But no decree so obtained has any effect against him if it was secured by the fraud or misconduct of such guardian."

Of Certificated Guardians.

82. (1) "Any relation or friend of a minor, or the Collector of the District in which the minor resides or has any property, may apply to the Court for the appointment or declaration of a guardian, and the Court may, on being satisfied that it would be for the welfare of the minor, subject to the rules herein stated, appoint or declare a guardian.

(2) Where a guardian has been validly appointed by the father in his Will, the Court may not appoint or declare any other person as a guardian until he has been removed for any of the reasons stated in Section 39 of the Guardians and Wards Act.

(3).Where any parent, and in the case of a married female, her husband, is available, the Court may not appoint any other guardian unless it finds that the parents or the husband as the case may be, is unfit to discharge the obligations of that office.

(4) Provided that in the case of other relations the Court will pay due regard to their natural claims to guardianship and may appoint any of them, or any other person found best fitted to promote the minor's welfare.

(5) Provided further that where the minor has attained sufficient maturity of intelligence and discretion, it will consult him and pay due regard to his choice of a guardian but will not be bound to appoint his nominee if it finds any other person better fitted to promote his welfare.

Explanation.—Nothing herein applies to the acknowledgment of liability made by the guardian on behalf of his ward or a liability arising by way of indemnity or otherwise than under the contract."

78. (1) "A transfer made by a guardian may be avoided by the minor, if it is wholly or partially unsupported by necessity, or was not for the benefit of the estate.

(2) Provided that in the case of partial necessity or benefit, the alience is entitled to restitution of the money paid for such necessity or benefit."

(3) Provided further, that where the bulk of the consideration is supported by legal necessity, the Court may, instead of setting aside the transfer, order payment to the transferor of such consideration as is not supported by necessity or benefit."

79. "A guardian cannot bind his ward by an act not purported to be done on his behalf."

80. "A transaction entered into with a minor is only voidable at the option of the minor."

81. (1) "A minor is bound by the result of a suit to which he was a party, if he was properly represented therein.

(2) Provided that if any decree be passed on a compromise, such compromise must be sanctioned by the Court.

(3) Provided further that no decree obtained by consent has any effect against the minor unless it was consented to by his natural or certificated guardian.

(4) But no decree so obtained has any effect against him if it was secured by the fraud or misconduct of such guardian."

Of Certificated Guardians.

82. (1) "Any relative or friend of a minor, or the Collector of the District in which the minor resides or has any property, may apply to the Court for the appointment or declaration of a guardian, and the Court may, on being satisfied that it would be for the welfare of the minor, subject to the rules herein stated, appoint or declare a guardian.

(2) Where a guardian has been validly appointed by the father in his Will, the Court may not appoint or declare any other person as a guardian until he has been removed for any of the reasons stated in Section 39 of the Guardians and Wards Act.

(3) Where any parent, not in the case of a married female, has married, is available, the Court may not appoint any other guardian unless it finds that the parents or the husband as the case may be, is unfit to discharge the obligations of that office.

(4) Provided that in the case of other relations the Court will pay due regard to their natural claims to guardianship and any appoint may of them, or any other person found fit fitted to promote the minor's welfare.

(5) Provided further that where the minor has attained sufficient maturity of intelligence and discretion, it will consult him and pay due regard to his choice of a guardian but will not be bound to appoint him unless it finds any other person better fitted to promote his welfare

(6) An order passed by the Court acting under the Guardians and Wards Act is final, and cannot be contested by suit or otherwise."

83. "One person may be appointed guardian of the person and another of the property; and two or more persons may be so appointed joint guardians of the person or of the property, or of both."

84. "It is not competent to the Court to appoint a guardian in respect of the property of a minor, or of an otherwise disqualified member of a joint family, of which he has no present separate possession."

85. "A guardian of the minor's person has the right to the custody of his ward during the period of his guardianship."

86. "The appointment of a guardian by Court has the effect of cancelling a guardian otherwise appointed or constituted."

## CHAPTER VII

## LAW OF MAINTENANCE.

87. "A person is personally bound to maintain the following persons namely:—(a) His minor sons, whether legitimate or illegitimate; (b) his unmarried daughters; (c) his wife so long as she is chaste, and remains under his roof and protection, or lives apart for a just cause; (d) his aged father and mother."

88. "A wife, who is entitled to maintenance, does not forfeit her right by her husband's conversion to another faith."

89. "No mistress of a Hindu has any right of maintenance unless she has been kept by him until his death, in which case she becomes entitled to maintenance out of the estate in the hands of his heirs, so long as she remains chaste."

90. (1) "The manager of a joint Mitakshara family is bound to maintain all male members of the family, their wives and their children, and on the death of any of the male members, he is bound to maintain his widow and his children.

(2) The obligation is commensurate only with the possession of family property.

(3) The same principles apply to cases governed by the Dayabhad law.

(4) The holder of an impartable estate is bound to maintain all those who are customarily entitled to maintenance."

91. "Where a son or other heir is excluded from inheritance by reason of disability, he is entitled to maintain himself and his family out of the property which he would have inherited but for his disability."

92. (1) "The widow who does not succeed to the estate of her husband as his heir is entitled to maintenance out of her husband's separate property, or out of the property in which he was a co-parcener at the time of his death.

(2) Save and except as above, she has no absolute right of maintenance.

CHAPTER VII

LAW OF MAINTENANCE

87. "A person is personally bound to maintain the following persons directly:—(a) His minor sons, whether legitimate or illegitimate; (b) His unmarried daughters; (c) His wife or lord as the case may be, and His deserted daughters; (d) His wife or lord as the case may be, and His deserted daughters, or lives apart for a just cause; (e) His aged father and mother."

88. "A wife, who is entitled to maintenance, does not forfeit her right to it for husband's desertion to another faith."

89. "No attorney of a Hindu has any right of maintenance unless and to the extent to which the income available to him from the property held by him until his death, is short of his debts, in which case the income available to him from the property held by him until his death, is short of his debts, in which case the maintenance out of the estate in the hands of his heirs, as long as the creditor obtains."

90. (1) "The manager of a joint Mitakshara family is bound to maintain all male members of the family, their wives and children, and to the limit of any of the sons, members, he is bound to maintain his other and his children."

(2) The allocation is recommended only with the possession of family property.

(3) The same principles apply to cases governed by the Dayabhaga law.

(4) The father of an imprisible estate is found to maintain all those who are customarily entitled to maintenance."

91. "Where a son or other heir is compelled from intervention by reason of disability, he is entitled to maintain himself and his family out of the property which he would have inherited for his disability."

92. (1) "The widow who does not succeed to the estate of her husband as his heir is entitled to maintenance out of her husband's separate property, or out of the property in which he was a co-parcener at the time of his death.

(2) Save as aforesaid, she has no claim to maintenance.

(3) Her right of maintenance is not forfeited by reason of her having lived apart from her husband in his lifetime without any justifying cause."

(4) The widow does not forfeit her right of maintenance by reason of her living apart from her husband's relations unless she does so for immoral or improper purposes.

(5) Continued chastity is a condition precedent to the widow's right to maintenance. But in case of her unchastity, she is allowed a locus penitentiae so that if she reforms and leads a continent life, she becomes entitled to at least a starving maintenance.

(6) Maintenance is not a charge upon the estate, but may be so made by contract or a Court's decree."

93. The widow is as of right entitled to reside in the family dwelling house. This right cannot be defeated by a sale of the house to a purchaser with notice. Even in the case of a purchaser without notice, she cannot be evicted unless she is provided with another residence. But she has no such right where the sale is contracted by the husband or is for a debt binding upon her."

94. "Mere loss of caste does not deprive a person of his right to maintenance."

95 (1) "In fixing the amount of maintenance payable to a widow, regard must be had to the following facts:

(a) The income of the entire estate, (b) the position and status of the deceased husband, (c) the value of his estate, (d) the stridhan in her possession, and (e) her reasonable wants:

(2) Provided that the amount of maintenance shall in no case exceed the annual profits of the share to which the husband would have been entitled on partition, if living."

96. "The widow has no right of maintenance in the following cases:

(1) If she has sufficient stridhan, or other means of support, from the income of which she can maintain herself;

(2) if she had once received sufficient allotment for her maintenance which she has since dissipated;

(3) if she is remarried;

(4) if she is leading an unchaste life;

(5) if she is living apart from her husband's family for immoral or improper reasons, or without a just cause."

97. "The amount of maintenance is liable to variation with the change of circumstances of the family and the value of the estate."

98. "Debts due from the family take precedence over the widow's claim for maintenance."

99. (1) "The right to maintenance is a personal right and cannot be transferred.

(2) A right to maintenance cannot be attached in execution of a decree, though arrears of maintenance may be so attached or transferred."

100. "A person cannot defeat the right of his wife or widow to maintenance by disposing of his entire property by gift or devise, and if he does so, she has the right to enforce her claim against the donee or devisee as the case may be."

(3) Her right of maintenance is not forfeited by reason of her having lived apart from her husband in his lifetime without any justifying cause."

(4) The widow does not forfeit her right of maintenance by reason of her having eaten from her husband's relations unless she does so for immoral or improper purposes.

(5) Continued security in a court else precedent to the widow's right to maintenance. But in case of her necessity, she is allowed a legal maintenance so that if she refrains and leads a continent life, she cannot continue to at least a starving maintenance.

(6) Maintenance is not a charge upon the estate, but may be ordered by executors or a Court's decree."

35. The widow is no of right entitled to reside in the family dwelling house. This right cannot be defeated by a sale at the house to a purchaser with notice. Even in the case of a purchaser without notice, she cannot be evicted unless she is provided with another residence. But she has no such right where the sale is contemplated by the husband or is for a bona fide open sale."

36. "Where loss of caste does not deprive a person of his rights to maintenance."

37. (1) "In fixing the amount of maintenance payable to a widow, regard must be had to the following facts:

(a) The income of the entire estate, (b) the position and status of the deceased husband, (c) the value of his estate, (d) the attendant circumstances of the family and the value of the estate, (e) her reasonable wants in her possession, and (f) her reasonable wants.

(2) Provided that the amount of maintenance shall in no case exceed the amount details of the share to which the husband would have been entitled on partition, if living."

38. "The widow has no right of maintenance in the following cases:

(1) If she has sufficient estate, or other means of support, from the income of which she maintain herself;

(2) If she had once received sufficient estate for her maintenance which she has since disposed;

(3) If she is remarried;

(4) If she is leading an unchaste life;

(5) If she is living apart from her husband's family for immoral or improper reasons, or without a just cause."

39. "The amount of maintenance is liable to variation with the change of circumstances of the family and the value of the estate."

40. "Debts are like the family also precedence over the widow's right for maintenance."

41. (1) "The right to maintenance is a personal right and cannot be transferred.

(2) A right to maintenance cannot be attached in execution of a decree through arrears of maintenance may be attached or transferred."

42. "A person cannot defeat the right of his wife or widow to maintenance by disposing of his entire property by gift or device, and it is open to her to have the right to enforce her claim against the donee or devisee as the case may be."

101. "The right of maintenance or residence may be enforced against all transferees and devisees of the property liable to the claim except a bona fide transferee for valuable consideration paid for a purpose binding upon the claimant, or one without notice of the right."

102. "Maintenance is payable out of and may be charged on any property of the person personally liable for it; otherwise it may be charged on and is payable out of the joint family or inherited property according to the nature of the right."

103. "A person entitled to maintenance may sue for a declaration of his right, and combine therewith a claim for past and future maintenance, with or without a charge to be created on any property liable to the claim."

104. (1) "A suit by the widow for maintenance may be brought against all or any of the heirs in possession of the estate liable to the claim:

(2) But if the suit be to declare or enforce a charge, then all persons interested in the estate must be joined."

105. (1) "A decree for maintenance must fix dates for the periodical payments of the amounts decreed, giving directions for its execution, and where it is charged on any estate, it must contain directions for a sale of the property charged, so far as may be in accordance with Order XXXIV, Rules 4 and 5 of the Code of Civil Procedure.

(2)"A decree charging any property for maintenance may be executed in accordance with the law regulating the enforcement of a charge."

106. "A suit for a declaration of a right of maintenance must be brought within 12 years from the time when the right is denied, and a suit for arrears within the same period from the time when the arrears are payable."

## CHAPTER VIII

## THE JOINT FAMILY

107. "In this and the next three following chapters, unless there is something repugnant in the subject or context—

'Father,' wherever used, includes also the paternal grandfather and the paternal great-grandfather by legitimate scent or by valid adoption:

'Son' includes also the paternal grandson and the paternal great-grandson in the male line by legitimate descent or by valid adoption;

'Issue' means and includes the son, the paternal grandson, and the paternal great-grandson by legitimate descent or by valid adoption."

108. (1) "'Ancestral property' means property which a person inherits from his father, or father's father, or father's father's father; and

(2) all property acquired out of the income of such property."

109. (1) "The joint property of a joint family comprises the following property, namely:

(a) Ancestral property inherited by a member of the family from a direct male ancestor not exceeding three degrees higher than himself;

CHAPTER XVIII

THE JOINT FAMILY

107. "In this and the next three following chapters, unless there is something repugnant in the subject or context—

'Father,' wherever used, includes also the paternal grandfather and the paternal great-grandfather by legitimate descent or by valid adoption;

'Son' includes also the paternal grandson and the paternal great-grandson in the male line by legitimate descent or by valid adoption;

'Lawful' means and includes the son, the paternal grandson, and the paternal great-grandson by legitimate descent or by valid adoption."

108. (1) "Ancestral property' means property which a person inherits from his father, or father's father, or father's father's father.

(2) "Property acquired out of the income of such property."

109. (1) "The joint property of a joint family comprises the following property, namely:—

(a) Ancestral property inherited by a member of the family from his direct male ancestor not exceeding three degrees higher than himself;

(b) acquisitions to the property made with the help of joint ancestral property;

(c) save as provided by the next section, property acquired by members of the joint family;

(d) property acquired with the help of nucleus of ancestral property;

(e) property which, though separately acquired, is thrown into the common stock.

(2) Such property may be called coparcenary property;

(3) and members of the family possessing a share therein may be called coparceners."

110. (1) "The following property constitutes the self-acquisition of a member of a joint family:

(a) Property acquired by inheritance from a lineal ancestor more than three degrees remote or from a collateral or from or through a female relation;

(b) property acquired by gift or devise;

(c) property acquired without detriment to the joint estate;

(d) property which is the gains of learning or science acquired without substantial help from the joint funds;

(e) property which by its nature or extent or the mode of its acquisition is incapable of joint ownership.

(2) Where self-acquired is blended with joint property in such a manner that it is impossible to separate the two, the whole may be presumed to be joint property."

111. "'Legal Necessity' and 'Benefit' are of two kinds: spiritual and secular."

112. (a)"Spiritual necessity implies the performance of such spiritual acts as the religion of a person enjoins as obligatory.

(b) It is distinguished from spiritual benefit in that while the one is regarded as obligatory, the other is merely beneficial without being obligatory."

113. (1) "'Secular legal necessity' implies such pressing requirements of the family or of the estate which the law regards as sufficient justification for contracting a debt, or for the transfer of the joint estate.

(2) In particular and without prejudice to the generality of the foregoing provision, the following objects constitute such necessity:—

(a) The debt of the father, not illegal or immoral, or of the husband;

(b) payment of rent or revenue assessed on the joint property and all charges of a public nature accruing due therefrom, in default of payment of which it may be summarily sold;

(c) payment of a reasonable premium on renewal of a lease and rent due thereon;

(d) other charges necessary for the preservation of the property from destruction, deterioration, forfeiture or sale;

(e) the expenses reasonably requisite for the assertion or protection of the title to the property;

(f) its due management, and the collection of the rents and profits thereof;

(g) the protection and maintenance of co-parceners, and of their wives and issues;

(h) the marriage expenses of co-parceners, and of their daughters;

(i) the cost of defending a member of the joint family in a criminal prosecution."

114. "'Secular benefit' include such protection or preservation or improvement of family estate, or the maintenance, education, or advancement of its members, as may, due regard being had to all circumstances, be considered reasonable and proper."

Incidents of a Joint Family.

115. "A Hindu family is constituted of the following members, namely:

(1) Persons descended from a common ancestor and related to one another as Sapindas;

(2) collateral relations descended from a common ancestor in the male lines;

(3) persons adopted into the family;

(4) the mother, the wives and widows of the male members, and unmarried daughters."

116. (1) "A co-parcenary is a joint family comprising common male ancestor with his lineal descendants in the male line not more than three degrees remote from him, or with those of the last holder of a share of his property.

(2) A co-parcener is a male related not more than three degrees remote from a direct ancestor who owned an estate or was entitled to a share therein."

117. "The relation of co-parcenership arises by law. It cannot be created by contract."

118. (1) "A person who is and has been congenitally a lunatic or idiot is disqualified from co-parcenership.

(2) Save as above no person is so disqualified by reason only of any disease, deformity or physical or mental defect:

(3) Provided that such disqualification is personal only to the co-parcener and does not affect his natural issue, though it affects equally his adopted son and the wife."

119. "A co-parcener, otherwise qualified, loses his right in a co-parcenership by—

(i) his adoption (other than in the Dvamushyayan form) into another family;

(ii) the alienation of his interest for consideration, subject to the provisions of Section 122;

(iii) its attachment and sale in execution of a decree passed against him personally;

(iv) the extinction of his interest by adverse possession;

(v) his voluntary retirements from the world;

(vi) the release of his interest in favour of the co-parcenary."

120. (1) "A co-parcener may at any time withdraw from a co-parcenership of which he is a member, and his co-parcenary right will cease on his doing an act or suffering an ommission found to be imcompatible with its continuance.

(2) In particular and without prejudice to the generality of the foregoing provision, the co-parcenary right of a member is determined in the following cases, namely:

(i) On his withdrawal from the co-parcenary;

(ii) on his demanding a partition of his share;

(iii) on his relinquishing his share;

(iv) on his conversion to an alien faith, such as, Christianity or Mahomedanism; and

(v) on his contracting a marriage in accordance with the provisions of the Special Marriage (Amendment) Act, 1923."

121. "Subject to any law for the time being in force, and the nature of the estate, the interest of every co-parcener is subject to the following incidents, namely:

(1) Every co-parcener, with his wife and children is entitled to joint mess, residence, and worship in the family dwelling house;

(2) he is entitled to joint possession and joint enjoyment of all property comprised in the co-parcenership;

(3) both he and his wife and children are entitled to maintenance and protection out of the co-parcenary funds;

(4) he may restrain any illegal or improper acts of the other co-parceners in respect of the co-parcenary;

(5) subject to the provisions of the next section and to the extent therein provided, he may alienate his share;

(6) his interest is liable to variation with the members of the co-parcenary, but in Bengal it is fixed;

(7) he is, subject to the provisions hereinafter contained, entitled to call for the partition of his share;

(8) except in a suit for partition, he cannot recover the profits of his share or separate possession of any portion of the joint property otherwise than by way of restitution;

(9) his power ever his separate and self-acquired property is in no way affected by his interest in the co-parcenary."

122. "No alienation of his right by a coparcener is valid except to the following extent, namely:—

(1) He may alien it for legal necessity, or with the consent of the other coparceners;

(2) he cannot otherwise alien it by gift or devise;

(3) nor can he even surrender it to anyone or more of his co-parceners as distinct from the whole co-parcenary;

(4) provided that in the Provinces of Bombay, Madras, the Central Provinces and Berar he may alien it for valuable consideration, and elsewhere upon an express representation of his right of alienation, in which case the alienee acquires only the right as provided in the next following section."

Exception.—"Nothing herein applies to a co-parcener subject to the Dayabhag law."

123. "Where a co-parcener aliens his right in accordance with the provisions of the last section, the alienee acquires the following rights, namely:—

(1) Where the alienation is made for legal necessity or with the consent of the other co-parceners, the alienee acquires the interest conveyed to him;

(2) where it is otherwise conveyed for valuable consideration, as provided in Section 122 (4), the alienee acquires no more than a mere personal equity against his alienor which he may enforce in the following manner and to the following extent, namely:—

(i) The alienee's interest is unaffected by any variation in his alienor's share by the subsequent birth or death of another co-parceners;

(ii) he may call for a general partition requiring that the share alienated to him be allotted, if possible, to his alienor and the same transferred to him;

(iii) he may obtain a declaration of his right and may enforce it by way of specific performance of a contract to transfer against his alienor and also by damages against him, but the right being personal can only be enforced against the alienor personally, and lapses on his death;

(iv) the alienee may attach his alienor's interest in execution of his decree obtained against him, and the right is enforceable against the survivors in case of his alienor's death, but should the latter die before the attachment, no cause of action survives to the alienee against the alienor's surviving co-parceners;

(v) the alienee's equity is not enforceable against a bona fide transferee without notice of it."

124. (1) "The normal state of a Hindu family is one of jointness in mess and estate.

(2) As such, it may be presumed that—

(a) such family continues to remain joint until the contrary is shown;

(3) his power over his separate and self-acquired property is in no way affected by his interest in the co-property."

120. "No alienation of his right by a coparcener is valid except to the following extent, namely:—

(1) he may alien it for legal necessity, or with the consent of the other coparceners;

(2) he cannot otherwise alien it by gift or device;

(3) nor can he even surrender it to anyone or more of his coparceners so as to relieve from the whole co-property;

(4) provided that in the Province of Bombay, Madras, the Central Provinces and Berar he may alien it for valuable consideration, and also upon an express renunciation of his right of alienation, in which case the alienee acquires only the right as provided in the next following section."

Exception.—Nothing herein applies to a co-property subject to the Dayabhag law."

129. "Where a co-parcener alienes his right in accordance with the provisions of the last section, the alienee acquires the following rights, namely:—

(1) Where the alienation is made for legal necessity or with the consent of the other co-parceners, the alienee acquires the interest conveyed to him;

(2) where it is otherwise authorized for valuable consideration, as provided in Section 128 (4), the alienee acquires no more than a sure personal equity against his alienor which he may enforce in the following manner and to the following extent, namely:—

(i) The alienee's interest is unaffected by any variation in his alienor's share by the subsequent birth or death of another co-parcener;

(ii) he may call for a general partition requiring that the share alienated to him be allotted, if possible, to his alienor and the same transferred to him;

(iii) he may attain a declaration of his right and may enforce it by way of specific performance of a contract to transfer against his alienor and also by damages against him, but the right being personal only can be enforced against the alienor personally, and lapses on his death;

(iv) the alienee may attach his alienor's interest in execution of his decree obtained against him, and the right is enforcible against the survivors in case of his alienor's death, but should the latter die before the attachment, no order of action survives to the alienee against the alienor's surviving co-parceners;

(v) the alienee's equity is not enforceable against a bona fide transferee without notice of it."

134. (1) "The normal state of a Hindu family is one of jointness in mess and estate.

(2) As such, it may be presumed that—

(a) such family continues as a whole joint until the contrary is shown;

(b) where any property is shown to have been once joint family property, it remains joint until the contrary is shown;

(c) all property acquired by or in the possession of a joint member is joint property;

(d) where there is a nucleus from which property may be acquired, any property acquired with its aid by a member is joint property.

(3) Provided that no presumption referred to in the last clause shall be made where it is admitted or proved that there has been separation from the joint family."

Explanation.—"The presumption arising under this section may extend to the property standing in the name of the female members of a joint family in the circumstances stated in the next section."

125. (1) "All acquisitions made by the manager of a joint family in the name of any of its co-parceners will be presumed to be made out of its fund and for its benefit.

(2) But no such presumption arises where the property stands in the name of a non-coparcener:

Provided, however, that where any property is acquired or held in the name of a dependent near female relation of a coparcener, such as his wife or daughter, the same presumption may be made, if it appears that the acquisition was made out of the funds of the joint family and there appears no ground for believing that it was a provision by or on behalf of the joint family."

126. (1) "Any co-parcenary property may be alienated by or with the consent of all the co-parceners;

(2)where any of the co-parcenary property has been alienated with the consent of the co-parceners, those born thereafter are not entitled to impeach its validity;

(3) where a co-parcenary comprises members some of whom are minors, no consent of the adult co-parceners can affect their interest beyond furnishing evidence of necessity, which may be rebutted.

(4) where of several co-parceners some only consent to an alienation, it is valid to the extent of their interest, and their consent may be further evidence of necessity which may, however, be rebutted."

Exception:—"Nothing herein applies to property which is otherwise inalienable."

127. (1) "Except in the case of a trading family, the father, and in his absence, the next senior male relation is the rightful manager of a coparcenary:

(2) Provided that during the incapacity or absence of the manager or in case of emergency, any other co-parceners may with the express or implied consent of the rest of co-parceners act for him."

128. "The manager possesses the following powers:--

(1) He is entitled to be in physicial possession of the joint property, and perform, in respect of it, all acts of management;

(2) as such, he may realize and expend its income at his descretion;

(3) as such, is not required and exempt its income at his discretion and perform, in respect of it, all acts of management;

(4) he is entitled to be in physical possession of the joint property.

128. "The manager possesses the following powers:--

(1) He is entitled to receive all money due to the joint family and give effectual discharges therefor;

(2) Provided that during the temporary or absence of the manager or in case of emergency, any other co-parcener may with the express or implied consent of the rest of co-parceners act for him.

(3) In case of the manager's absence, the next senior member of the joint family, in his discretion, may perform the duties of manager.

129. "Nothing herein applies to property which is otherwise testamentary."

130. (1) "Except in the case of a Hindu family, the father, and in his absence, the next senior male relation in the direct ascending line of the manager of a joint family governed by the Mitakshara law, is entitled to be the manager of the family.

(2) Provided that no person who has become a convert to any religion other than the Hindu religion shall be entitled to be the manager of a joint family governed by the Mitakshara law, unless all the members of the family are converts to such religion.

(3) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(4) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(5) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(6) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(7) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(8) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(9) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(10) Provided that a person who has become a convert to any religion other than the Hindu religion may be the manager of a joint family governed by the Mitakshara law, if all the members of the family are converts to such religion.

(3) he is not accountable to his co-parceners for his management, nor liable to them for his negligence or mismanagement;

(4) he becomes however, so liable if he was fraudulently misappropriated any of its income, or spent it on purposes not binding on the family;

(5) he is entitled to contract debts and alienate or charge the joint estate for legal necessity, or for its benefit, to the extent hereinafter provided;

(6) he is entitled to represent the co-parcenary in all suits and proceedings affecting its interests, to make contracts, give discharges, pass receipts, acknowledge debts, refer to arbitration, compromise any claim or dispute affecting it, and generally to do all such acts as he may consider necessary or for its benefit;

he is the defacto guardian of the co-parcenary interest of the minor members of the family."

129. "A co-parcener is liable to the extent of his interest in the co-parcenary property for all debts incurred and alienations of the co-parcenary property made by the manager:--

(a) Where the debt is incurred or the alienation made expressly or impliedly by him as such for legal necessity or benefit as defined in Sections 111-114;

(b) where the creditor or alienee, after reasonable inquiry, in good faith believes that the debt was so incurred or the alienation was so made."

Explanation 1.--"If the debt was incurred or the alienation made for legal necessity or benefit, the fact that the transaction had been precipitated by the previous mismanagement of the manager does not affect the creditor or the alience, unless he was himself a party to such mismanagement."

Explanation 2.--"There is no presumption that the debt incurred or the alienation made by the manager was just and proper so as to bind the co-parceners."

Explanation 3.--"Nothing herein precludes a co-parcener from making himself or being made otherwise liable, by his act or omission, conjointly with or apart from the manager."

130. "An alienation by the manager of joint property without legal necessity is not void, but only voidable at the instance of the co-parceners affected thereby."

131. "Where an alienation is found to be in excess of the requirements of legal necessity or benefit, or, in the case of the father's alienation also of an antecedent debt, it may, except as otherwise provided, be set aside or upheld in accordance with the following rules:--

(a) Where it is justified by all but an inconsiderable part of the consideration, the Court may uphold the whole alienation presuming it as so justified, or place the alienee upon terms;

(b) where it is only partially so justified, the alienation will be set aside upon the alienee being reimbursed the consideration found supported by legal necessity or benefit, and the cost of improvements, if any, made by him;

provided that no person, not a bona fide alienee for valuable consideration without notice, can claim such equity to compensation;

(3) be in not reasonably to his co-proprietor for his management,
nor liable to them for his negligence or mismanagement;

(4) be bound by, or liable in to be was fraudulently disproprietated any of its income, or agent it to purposes not pledged on the family;

(5) be is entitled to contract debts and alienate or charge the joint estate for legal necessity or for its benefit, to the extent hereinafter provided;

(6) be is entitled to represent the co-property in all suits and proceedings affecting its interests, to make contracts, give discharges, receipts, acknowledge debts, refer to arbitration, compromise any claim or dispute affecting it, and generally to do all such acts as be may consider necessary or for its benefit;

be is the defacto guardian of the co-property interest of the minor members of the family."

"A co-proprietor is liable to the extent of his interest in the co-property property for all debts incurred and alienations of the co-property made by the manager--

(a) Where the debt is incurred or the alienation made expressly or impliedly by him as such for legal necessity or benefit as defined in Sections 111-112;

(b) where the creditor or alienee, after reasonable inquiry, in good ... that the debt was so incurred or the alienation was so made."

Explanation 1.--"If the debt was incurred or the alienation made for legal necessity or benefit, the fact that the transaction had been precipitated by the previous mismanagement of the manager does not affect the creditor or the alienee, unless he was himself a party to such mismanagement."

Explanation 2.--"Where in the transaction that the debt incurred or the alienation made by the manager was just and proper as to bind the co-proprietors."

Explanation 3.--"Notwithstanding herein contained a co-proprietor from making himself or being otherwise liable, by his act or omission, contrary with or apart from the manager."

130. "An alienation by the manager of joint property without legal necessity is not void, but only voidable at the instance of the co-proprietors alienated thereby."

131. "Where an alienation is found to be in excess of the requirements of legal necessity or benefit, or, in the case of the father's alienation also of an antecedent debt, it may, except as otherwise provided, be set aside or upheld in accordance with the following rules--

(a) Where it is justified by all but a inconsiderable part of the consideration, the Court may uphold the whole alienation providing it is so justified, or place the alienee upon terms;

(b) where it is only partially so justified, the alienation will be set aside upon the alienee being reimbursed the consideration found supported by legal necessity or benefit, and the cost of improvements, if any, made by him;

provided that no person, not a bona-fide alienee for valuable consideration without notice, can claim such equity to compensation;

(c) but before impeaching a transaction, the Court will pay due regard to the lapse of time and all attendant circumstances."

132. (1) "The manager is entitled to make such gifts or presents either to the members of the family or strangers as are usual or customary;

(2) and the father, and in his absence, the mother has in this respect even a larger discretion, being entitled to make it at any time to a reasonable extent."

133. "No manager can exercise his power in fraud of the co-parceners."

Incidents of a Trading Family.

134. "Where a joint Hindu family carries on an ancestral trade, it becomes a trading family and is then governed—not by the rules of co-parcenership, but by the co-parcenary rules as modified by the incidents and exigencies of trade.

In particular and without prejudice to the generality of the foregoing provision, such incidents are as follows:—

(1) An ancestral family trade devolves upon members of a joint undivided family and the partnership is not dissolved by the death of any of the members, nor can any one of the partners when severing his connection with the business demand an account of past profits and losses;

(2) any member may be appointed the accredited manager and agent of the firm;

(3) such manager or agent may carry on the trading business of the firm;

(4) and for that purpose, he may pledge the credit of the joint family;

(5) he is not accountable to them for past profits and losses;

(6) he is entitled to contract debts and alienate property so as to bind the other members in the circumstances and to the extent provided in Section 140."

CHAPTER IX

DEBTS AND ALIENATIONS.

135. "Unless there is anything repugnant in the subject or context—

(a) 'debt' includes a liability arising out of contract express or implied, or a breach of civil duty for which a suit would lie;

(b) 'illegal and immoral debt,' with reference to the father's debt, means not only such debt as is tainted with illegality or immorality as commonly understood, but also a debt which is regarded as Avyavharik, that is to say, unusual and not customary."

Explanation 1.—"A debt is illegal or immoral if it results from an act ab initio criminal, and not one which is merely wrongful or which merely involves a breach of civil duty."

Explanation 2.—"A liability to indemnify an innocent person against the illegal or immoral act of the father is not necessarily illegal or immoral."

Explanation 3.—"A debt is not illegal or immoral merely because it is recklessly or imprudently incurred."

(c) 'Antecedent debt' means, with reference to an alienation made by the father, a debt (not illegal or immoral) incurred, whether on the security of the co-parcenary property or not, prior to such alienation, in a transaction unconnected therewith; and includes a debt to pay off such a debt;

(b) 'creditor' means any person in respect of whom a debt is incurred;

(c) the terms 'father' and 'son,' wherever they occur, are used in the sense defined in Section 107;

(f) a person is said to have 'notice' of a fact when he actually knows that fact or when, but for wilful abstention from inquiry or search which he ought to have made or cross negligence, he would have known it, or when information of the fact is given to or obtained by his agent in the circumstances mentioned in Section 229 of the Indian Contract Act, 1872;

(g) a person is said to 'believe in good faith' when, after using reasonable care to ascertain the existence or non-existence of any circumstances, he believes in the existence or non-existence of such circumstances."

136. (1) "Save as hereinafter provided, the debts of a person must be paid by himself, and on his death, out of his separate property in whosesoever hands it might be, whether of the executor, administrator or the heir, except that alienated for value.

(2) No heir, executor, or administrator is bound to pay a debt of the deceased which, by reason of its illegality, immorality or otherwise, he would not have himself been bound to pay.

(3) A coparcener is liable to pay his own debt personally and out of his separate property, or coparcenary interest so long as he is alive, but on his death, it cannot be recovered out of his coparcenary interest, unless it has been attached during his lifetime.

Provided that where the debt was due from the father, and is not illegal or immoral, his son is liable to pay it, to the extent of the assets inherited by him as hereinafter provided.

(4) The universal donee is personally liable to pay all debts of the donor due at the time of the gift, to the extent of the property comprised therein; while other donees are liable to pay his debts to the same extent, if the said gift was made with intent to defeat or delay any creditor, or has resulted in defrauding, defeating or delaying him, or the debtor was adjudged an insolvent within two years of the gift."

Explanation 1.—"The terms 'heir', 'executor' or 'administrator' in this section include any person so claiming, as also one who intermeddles with the estate of the deceased."

Explanation 2.—"The heir of an impartible estate is, upon succession, liable to pay all the lawful debts of his predecessor out of the estate."

Explanation 3.—"The liability to pay a debt does not cease merely because the remedy for its recovery is barred."

Explanation 4.—"A gift includes an alienation made for a grossly inadequate consideration."

Explanation 2.—"A liability to husband or innocent person arising
the illegal or immoral act of the father is not necessarily illegal or
immoral."

Explanation 3.—"A debt is not illegal or immoral merely because it
is recklessly or imprudently incurred."

(a) 'Antecedent debt' means, with reference to an alienation made by the father, a debt (not illegal or immoral) incurred, whether on the security of the coparcenary property or not, prior to such alienation, in a transaction unconnected therewith and including a debt to pay off such a debt;

(b) 'creditor' means any person in respect of whom a debt is incurred;

(c) the terms 'father' and 'son,' wherever they occur, are used in the same defined in Section 3(7);

(d) a person is said to have 'notice' of a fact when he actually knows that fact or when, but for wilful abstention from inquiry or search which he ought to have made or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent in the circumstances mentioned in Section 229 of the Indian Contract Act, 1872;

(e) a person is said to 'believe in good faith' when, after using reasonable care to ascertain the existence or non-existence of any circumstance, he believes in the existence or non-existence of such circumstance."

[illegible] (1) "Save as hereinafter provided, the debts of a person must be paid by himself, and on his death, out of his separate property in whosesoever hands it might be, whether of the executor, administrator or the heir, except that alienated for value.

(2) No heir, executor, or administrator is bound to pay a debt of the deceased which, by reason of its illegality, immorality or otherwise, he would not have himself been bound to pay.

(3) A coparcener is liable to pay his own debt personally and out of his separate property, or coparcenary interest no less than he is alive, but on his death, it cannot be reckoned out of his coparcenary interest, unless it has been attached during his lifetime."

Provided that where the debt was due from the father, and is not illegal or immoral, his son is liable to pay it, to the extent of the assets inherited by him as hereinafter provided.

(4) The universal succe is personally liable to pay all debts of the deceased as incurred within two years of the gift."

Explanation 1.—"The terms 'heir', 'executor' or 'administrator' in this section include any person so claiming, as also one who intermeddles with the estate of the deceased."

Explanation 2.—"The heir of an impartible estate is, [illegible]
liable to pay all the lawful debts of his predecessor out of the estate."

Explanation 3.—"The liability to pay a debt does not cease merely because the remedy for its recovery is barred."

Explanation 4.—"A gift includes an alienation made for a grossly inadequate consideration."

137. "The husband and wife are not liable for the debts contracted by each other, except in the following cases:

(a) Where they were contracted by one as the agent of the other.

(b) Where they were contracted for household necessaries."

138. (1) "Notwithstanding any contract to the contrary, no debtor is liable to pay at the same time interest which exceeds the principal.

(2) This rule extends only to the areas within the original jurisdiction of the Calcutta High Court, the Presidency of Bombay, Sind and Berar.

(3) It does not apply to the following cases:

(a) Where the debtor is not a Hindu,

(b) where the creditor is liable to account,

(c) where the debtor agrees to the capitalization of interest,

(d) where the debt merges in a decree."

## CHAPTER X

## JOINT FAMILY DEBTS AND ALIENATIONS.

139. (1) "All property of a joint family is liable for a debt incurred by the manager on its behalf for the legal necessity or benefit thereof or of any of its members in accordance with the rules hereinbefore provided.

(2) Such property is liable even if the debt be incurred by a member other than the manager in the same circumstances in which a debt incurred by the manager would bind the family.

(3) Save as above, the joint family property is not liable for a debt incurred by the manager or any of its members.

(4) A joint family debt is not payable otherwise than out of the joint family property."

140. (1) "A debt incurred and an alienation of co-parcenary property made by the manager of an ancestral joint family business in the ordinary course of that business is binding on a co-parcener to the extent of the co-parcener's interest in the co-parcenary property.

(2) A debt incurred and an alienation of co-parcenary property made by the manager of a joint family business which is not ancestral, in the ordinary course of that business, is binding on an adult co-parcener, to the extent of the co-parcener's interest in the co-parcenary property, where the business has been undertaken or carried on with the express or implied consent of the co-parcener.

(3) Where any liability is incurred by the manager of a joint family business in the ordinary course of that business, the creditor or the alienee is not bound to inquire whether the liability is incurred for legal necessity or for the benefit of the family."

Explanation.—"In this section 'an ancestral joint family business' means, in respect of any co-parcener, a joint family business, an interest in which accrued to the co-parcener by survivorship."

CHAPTER X

JOINT FAMILY DEBTS AND ALIENATION.

138. (1) "All property of a joint family is liable for a debt incurred by the manager on its behalf for the legal necessity or benefit thereof or of any of the members in connection with the joint business provided,

(a) Such property is liable even if the debt be incurred by a member other than the manager in the same circumstances in which a debt incurred by the manager would bind the family;

(b) Save as above, the joint family property is not liable for a debt incurred by the manager or any of its members.

(c) A joint family debt is not payable otherwise than out of the joint family property."

139. (1) "A debt incurred and an obligation of co-parcenary property made by the manager of an ancestral joint family is not enforceable against the interest in the coparcenary property.

(2) A debt incurred and an obligation of co-parcenary property made by the manager of a joint family business which is not ancestral, in the ordinary course of the business is binding on the family, in the case of the co-parcenership of the business is binding on an adult co-parcener, to the extent of the co-parcener's interest in the co-parcenary property, where the business or the co-parcener is carried on with the express or implied consent of the co-parceners.

(3) When any liability is incurred by the manager of a joint family business in the ordinary course of its business, the creditor of the family is not bound to inquire whether the liability is incurred for legal necessity or for the benefit of the family."

Explanation.--"In this section the expression joint family business, in relation to any co-parcener, means a joint family business, an interest in which accrues to the co-parcener by survivorship."

141. (1) "Where the manager or the heir contracts a debt or transfers property for consideration, alleging the existence of justifying necessity or benefit, it will, as between the creditor or the transferee, on the one part, and the manager or the heir and other persons (if any) affected by the debt or the transfer on the other part, be deemed to have existed, if the creditor or transferee, as the case may be, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

(2) The same rule extends to the father contracting a debt or transferring property in consideration of an antecedent debt."

142. "Where an alienation by the manager is found to be void, its effect upon the interest of the alienor is subject to the following rules:--

(1) Where the alienation was voluntarily made by the manager subject to the Mitakshara law as applied to Behar, the United Provinces, Oudh and the Punjab, it is wholly void, subject however to such restitution and compensation to the alienee as the requirements of equity may demand.

(2) Where, however, in the provinces last mentioned, the alienation is involuntary, and in all other provinces whether it is voluntary or otherwise, on the alienation being found void against the joint family, the alienee is entitled to obtain his alienor's interest therein.

(3) Without prejudice to the generality of the rule stated in Clause (1), due regard must be had to the following facts:--

(a) The representation made by the alienee as to the necessity of the alienation;

(b) the enquiries if any, made by the alienee into the same;

(c) improvements made by him;

(d) the fact that the unconditional rescission of the alienation will benefit the alienor;

(e) collusion between the alienor and his co-parceners;

(f) acquiescence and delay in challenging the alienation."

143. "The provisions relating to the power of the manager to contract debts and alienate or charge the joint estate generally apply to:-

(1) A manager, whether subject to the Mitakshara or the Dayadhag law.

(2) The widow managing property inherited by her minor son.

(3) The guardian of a minor's estate.

(4) The manager of a religious endowment.

(5) The manager of the estate of a lunatic."

Onus of Proof: Presumptions.

144. (1) "In a suit against a co-parcener to recover a debt incurred or to enforce an alienation of co-parcenary property made by the manager, the creditor or the alienee is bound to prove that the debt or the alienation is binding upon the co-parcener.

(2) In a suit by a co-parcener for the recovery of co-parcenary property sold by the manager, the co-parcener is bound to prove that the sale is not binding on him and that the purchaser had notice thereof.

(3) In a suit by a co-parcener for the recovery of property mortgaged by the manager, the mortgagee is bound to prove that the mortgage is binding on the co-parcener."

145. "In a suit by a co-parcener for the recovery of co-parcenary property sold in execution of a decree against the manager, the co-parcener is bound to prove that the debt, sale or mortgage on which the decree was passed is not binding on him, and that the purchaser had notice thereof.

Provided that the purchaser (not being the judgment-creditor) shall not be bound to inquire into anything not appearing in the decree or in the execution proceedings."

146. "A sale of co-parcenary property in execution of a decree passed against the manager, which may be executed against the interest of a co-parcener, other than the manager, in the co-parcenary property, shall not be deemed to include the right, title and interest of the co-parcener unless that intention is proved."

147. (1) "A decree passed against the manager in respect of a liability incurred within the scope of his authority is enforceable against the other members of the joint family, though they may not have been parties to the suit.

(2) But in such case the other members are not precluded from contesting the authority of the manager or the binding nature of the debt.

(3) Where a decree directs sale of the right, title and interest of the defendant in any property, the question whether the sale so made suffices to pass the entire estate of which the defendant was the manager or only his own interest, is one of construction and intention, to be gathered from the proceedings and other circumstances of the case."

(4) In particular and without prejudice to the generality of the foregoing principle, in determining this question the following facts are material:

(a) The nature of the contract, if any;

(b) the character of the debt;

(c) the capacity in which the defendant is sued;

(d) the intention of the Court;

(e) the price paid by the purchaser; and

(f) any fact which shows what interests he intended to purchase."

148. "In a suit instituted to enforce a mortgage executed by the manager, the other members are proper parties, but their non-joinder does not exempt them from liability, if it appears that they were sufficiently represented by the manager."

## CHAPTER XII

## DAYABHAG JOINT FAMILY.

160. "In a family comprising the father and his sons and grandsons, the father is absolutely entitled to all property, whether ancestral, or self-acquired."

(3) In a suit by a co-partner for the recovery of property entrusted by the manager, the manager is bound to prove that the mortgage in favour of the co-partner.

142. "In a suit by a co-partner for the recovery of co-partnership property held in execution of a decree against the manager, the co-partner is bound to prove that the debt, sale or mortgage on which the decree was passed is not binding on him, and that the purchaser had notice thereof.

Provided that the purchaser (not being the judgment-creditor) shall not be bound to inquire into anything not appearing in the decree or in the execution proceedings."

143. "A sale of co-partnership property in execution of a decree passed against the manager, which may be set aside against the interest of a co-partner, either than the manager, in the co-partnership property, shall not be deemed to include the right, title and interest of the co-partner unless that intention is proved."

147. (1) "A decree passed against the manager in respect of a liability incurred within the scope of his authority is enforceable against the other members of the joint family, though they may not have been parties to the suit.

(2) But in such case the other members are not precluded from contesting the authority of the manager or the binding nature of the debt."

(3) Where a decree against sole or joint manager, relating to the debt or defendant in any property, the question whether the sale or mode purchase the entire estate of which the defendant was the manager or only his own interest, is one of construction and intention, to be gathered from the proceedings and other circumstances of the case."

(4) In particular and without prejudice to the generality of the foregoing principle, in determining this question the following facts are material

(a) the nature of the contract, if any

(b) the character of the debt

(c) the capacity in which the defendant is sued

(d) the intention of the parties

(e) the price paid by the purchaser and

(f) any fact which shows what interest is intended to purchase."

148. "In a suit instituted to enforce a mortgage executed by the manager, the other members are proper parties, but their non-joinder does not prevent them from liability, if it appears that they were sufficiently represented by the manager."

## CHAPTER XII

## PARTNERSHIP JOINT FAMILY.

149. "In a family consisting the father and his sons are partners, the father is absolutely entitled to all property, whether ancestral, or self-acquired."

161. "Except where the father is alive, the Dayadhag joint family is, as regards its management and the rights of members, subject to the same rules as the Mitakshara family, except that—

(a) a co-parcener may alien his share by sale, mortgage, gift or devise;

(b) women are not disqualified from becoming co-parceners."

162. (1) "All acquisitions are presumed to be made for the joint family, provided it had then a nucleus from which such acquisitions were possible.

(2) Those made by a member without the aid of joint funds become exclusively his own.

(3) But those acquired mainly by his own exertion with little assistance from the joint funds become accretions to the joint estate, the acquirer being entitled to a double share therein on partition.

(4) Acquisitions made with the aid of joint funds fall into the joint estate in which the acquirer is entitled to no preference."

## CHAPTER XIII

## PARTITION.

163. (1) "Partition is the intentional severance of co-parcenary interests by members of a joint family.

(2) An unequivocal expression of an intention to separate such interest may amount to partition.

(3) Partition may be effected by the definition of rights or by the division of property by metes and bounds."

164. (1) "A family arrangement is a settlement by members of the joint family as to the mode of enjoyment of their property.

(2) It differs from partition in that it is an agreement for separate enjoyment by members without determination of their rights."

165. (1) "A family arrangement cannot be set aside except for coercion, fraud, misrepresentation, undue influence, or mutual mistake.

(2) In particular and without prejudice to the generality of the foregoing rule, it may not be set aside upon any of the following grounds:

(a) That there was no consideration to support it;

(b) that it has transferred property to a person without any right;

(c) that it was unfair and such as no Court would support upon its merits;

(d) that it was made by mistake of either party.

(3) It may, however, be set aside on the ground that it was not bona fide or that there was no dispute.

CHAPTER XIII

PARTITION.

158. (1) Partition is the intentional severance of co-personalty interests by members of a joint family.

(2) An unequivocal expression of an intention to separate such interest may amount to partition.

(3) Partition may be effected by the declaration of rights or by the division of property by metes and bounds.

159. (1) A family arrangement is a settlement by members of the joint family as to the mode of enjoyment of their property.

(2) It differs from partition in that it is an agreement for temporary enjoyment by members without determination of their rights.

160. (1) A family arrangement cannot be set aside except for coercion, fraud, misrepresentation, undue influence, or mutual mistake.

(2) In particular and without prejudice to the generality of the foregoing rule, it may not be set aside upon any of the following grounds

(a) that there was no consideration to support it

(b) that it has transferred property to a person without any rights

(c) that it was unfair and such as no Court would enforce upon its merits

(d) that it was made by minors of either party.

(3) It may, however, be set aside on the ground that it was not true in fact or that there was no dispute.

161. Except where the father is alive, the Gurudhe joint family is, as regards its management and the rights of members, subject to the same rules as the Hiranyare family, except that—

(a) a co-parcener may alien his share by sale, mortgage, gift or devise;

(b) women are not disqualified from becoming co-parceners.

162. (1) All acquisitions are presumed to be made for the joint family, unless it had been a business from which such acquisition more possible.

(2) Those made by a member without the aid of joint funds become exclusively his own.

(3) But those acquired mainly by his own exertion with little assistance from the joint funds become accretions to the joint estate, the superior being entitled to a double share thereon on partition.

(4) Acquisitions made with the aid of joint funds fall into the joint estate in which the acquirer is entitled to no preference.

(4) But, before giving weight to these considerations, due regard must be had to the time during which the arrangement has been acted upon or has remained unchallenged."

166. "A family arrangement binds both the parties and their legal representatives."

167. "No writing is required to effect a partition, but if it is reduced to writing, which purports or operates to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest; whether vested or contingent, of the value of Rs. 100 and upwards, to or in immoveable property, it must be stamped and registered."

168. "The following persons are entitled to claim partition of joint property:—

(1) Adult co-parcener not disqualified for inheritance.

(2) Minor co-parcener, if the partition of his share would advance or protect his interest.

(3) Co-parcener's transferee acquiring a partible interest in the joint property."

169. (1) "A co-widow is entitled to the partition of her life-interest in her husband's estate.

(2) But such partition is not absolute and does not, in the absence of an express agreement to the contrary, determine her co-parcenary right of survivorship."

170. "Subject to any local law or usage to the contrary, the following female relations are each entitled to a share on partition:—

(1) On a partition between the father and his sons, or between the sons, their mother and their grandmother are entitled to a share which with the stridhan received from their husband or the father-in-law must equal a son's share.

(2) And unmarried daughters are entitled to a quarter of a son's share.

(3) On a partition between her sons or grandsons, and between them and the great-grandsons, a widow is entitled to a share equal to that of a son's son."

Exception.—"The wife or the widow in Southern India is allotted no share."

171. "A person otherwise entitled to partition may be disqualified from enforcing it for any of the following reasons:

(a) If he has entered into a valid agreement against it.

(b) If the property is subject to a family arrangement.

(c) If the parties have already become otherwise separate.

(d) If he has relinquished his share in the joint property."

172. (1) "Partition may be general or partial.

(2) Partition is general where all members join in partitioning their joint property.

[illegible]

(4) But, before giving weight to these considerations, due regard must be had to the time which the arrangement has been acted upon or has remained unaltered."

166. "A family arrangement binds [illegible] parties and their legal representatives."

167. "No writing is required to effect a partition, but if it is reduced to writing, which parties or operated to create, declare, assign, limit, or extinguish whether in present or in future, any right, title, or interest; whether vested or contingent, of the value of Rs. 100 and upwards, to or in immovable property, it must be stamped and registered."

168. "The following persons are entitled to claim partition of joint property—

(1) Adult co-parcener not disqualified for inheritance.

(2) Minor co-parcener, if the partition of his share would [illegible] or prevent his interest."

(3) Co-parcener's transferee acquiring a partial interest in the joint property."

169. (1) "A co-widow is entitled to the partition of her life-interest in her husband's estate."

[illegible]

an express agreement to the contrary, determine her corresponding right of survivorship."

170. "Subject to any local law or usage to the contrary, the following female relations are each entitled to a share on partition:—

(1) [illegible] between the father and his sons, or between the sons, their mothers and grandmother are entitled to a share with the sons, their mothers recovered from their husband or the father-in-law must equal a son's share.

(2) And unmarried daughters are entitled to a quarter of a son's share.

(3) In a partition between sons or grandsons, and between them and the great-grandsons, a widow is entitled to a share equal to that of a son's son."

Exception.—The wife or the widow in Southern India is allotted no share."

171. "A person otherwise entitled to partition may be disqualified from enforcing it for any of the following reasons:

(a) If he has entered into a valid agreement against it.

(b) If the property is subject to a family arrangement.

(c) If the parties have already begun otherwise separate.

(d) If he has relinquished his share in the joint property."

172. (1) "Partition may be general or partial.

(2) Partition is general when all members join in partitioning their joint property."

(3) It is partial when some of them separate, leaving the rest joint, or where all divide only some of their joint property.

(4) Partial partition cannot be made otherwise than by the agreement of parties, except where it is otherwise indispensable or would be equitable or convenient to the parties without prejudice to the rights of the co-parcenary.

(5) Without prejudice to the generality of the foregoing general provision such partition may be permitted in the following cases:

(i) Where partial partition is permitted by any other law.

(ii) Where different portions of the family property are situate in different districts.

(iii) Where the portion excluded is impartible.

(iv) Where the portion excluded has already been partitioned or is the subject of a family arrangement.

(v) Where the portion excluded is not in the possession of co-parceners.

(vi) Where the portion excluded is held jointly with a stranger who has no interest in the family partition.

(vii) Where the defendant has no interest in the portion excluded.

(viii) Where the property was omitted or excluded from a previous partition."

173. "In the absence of any contract to the contrary, co-parceners are entitled to shares at partition according to the following rules:

(1) Each member is presumed to represent himself and his sons whose share is included in the share allotted to him.

(2) Brothers take equal shares; and the share of a brother who has died is represented by his sons, grandsons and great-grandsons.

(3) As between different branches of a family, shares are given per stirpes, and as between the sons of the same father, per capita. But this rule does not apply to a partial partition.

(4) As between an adopted and an auras son of the Dwijas the former takes a fourth of the latter's share."

174. "The following acts shall be deemed to effect the separation of a member from the co-parcenary, namely:—

(a) His conversion to an alien faith, such as Christianity or Mahomedanism.

(b) His contracting a marriage under the provisions of the Special Marriage (Amendment) Act, 1923."

175. (1) "Separation may be proved by any declaration, act or conduct of a party entitled to partition, showing an intention inconsistent with jointness.

(2) "In particular and without prejudice to the generality of the foregoing rule, separation may be presumed from the following facts:

(3) It is partial when some of them separate, leaving the rest joint, or when all divide only some of their joint property.

(4) Partial partition cannot be made otherwise than by the agreement of parties, except where it is otherwise impracticable or would be equitable or convenient to the parties without prejudice to the rights of the creditors or persons.

(5) Without prejudice to the generality of the foregoing general provision such partition may be permitted in the following cases:

(i) Where partial partition is permitted by any other law.

(ii) Where different portions of the family property are situate in different districts.

(iii) Where the portion excluded is impartible.

(iv) Where the portion excluded has already been partitioned or is the subject of a family arrangement.

(v) Where the portion excluded is not in the possession of co-parceners.

(vi) Where the portion excluded is held jointly with a stranger who has no interest in the family partition.

(vii) Where the defendant has no interest in the portion excluded.

(viii) Where the property was settled or excluded from a previous partition."

192. "In the absence of any contract to the contrary, co-parceners are entitled to shares at partition according to the following rules:

(1) Each member is presumed to represent himself and his own share is limited in the share allotted to him.

(2) Brothers take equal shares and the share of a brother who died is represented by his sons, grandsons and great-grandsons.

(3) As between different branches of a family, shares are given per stirpes, and as between the sons of the same father, per capita. But this rule does not apply to a partial partition.

(4) As between an adopted and an aurus son of the Dallas the former takes a fourth of the latter's share."

194. "The following note shall be issued to effect the separation of a minor from the co-parcenary, namely:-

(a) His severation to an alien faith, such as Christianity or Mohammedanism."

(b) His contracting a marriage under the provisions of the Special Marriage (Amendment) Act, 1923."

198. (1) "Separation may be proved by any declaration, act or conduct of a party entitled to partition, showing an intention inconsistent with jointness."

(2) "In particular and without prejudice to the generality of the foregoing rule, separation may be proved from the following facts:

(a) Cessor of commensality and joint worship.

(b) Separate enjoyment of portions of the property, or of their income.

(c) Division of income.

(d) Agreement to divide the income in definite shares.

(e) Separate definement of shares.

(f) Separate transactions of the co-parceners, between themselves, with others."

Explanation.—"An act of a stranger such as attachment and sale of a co-parcenary interest does not suffice to effect separation."

176. (1) "Any person entitled to claim partition may sue for it.

(2) All persons entitled to a share therein are necessary parties.

(3) But a person in possession of any property under the joint family is not a necessary party."

177. (1) "Except as otherwise provided in this behalf, a suit for partition must relate to all property partible at the time and subject to the jurisdiction of the Court in which the suit is instituted.

(2) Where, however, such property is situated within the jurisdiction of more than one Court, suits may be brought in the several Courts possessing the requisite jurisdiction."

178. (1) "Every person entitled to a share may demand the partition of his share in specie and such partition may be made except in the circumstances next following:—

(2) Where the thing is by its nature indivisible, or

(3) where its partition in specie will destroy its intrinsic value or be otherwise inconvenient, or

(4) where its sale is demanded and justified by the Partition Act."

179. (1) "Partition must be made only of such property as is available at the date of demand.

(2) In the absence of fraud or misappropriation the manager is not liable to account to the co-parceners for past transactions or to pay them mesne profits in respect of property in his possession.

(3) Provided that if partition is demanded and refused or a co-parcener is excluded from joint or separate possession to which he was entitled under an arrangement, he may be allowed mesne profits from the date of such refusal or exclusion.

(4) Nor are the other members entitled to the cost of improvement or are accountable for the profits made from property in their separate possession

180. "In every partition, provision should first be made for—

(a) the payment of all family debts;

(b) the maintenance of members entitled to it;

(f) the maintenance of members entitled to it;

(g) the payment of all family debts.

186. "In every partition, provision should first be made for—

are reasonable for the profits made from property in their separate possession
or production.

(4) Nor are the other members entitled to the cost of improvements or
an arrangement, be may be allowed means profits from the date of such refusal

(3) Provided that if partition is demanded and refused by a co-owner
is excluded from joint or separate possession to which he was entitled under

(2) In the absence of fraud or misappropriation the manager is not
liable to account to the co-owners for such transactions or to pay them
means profits in respect of property in his possession.

the date of demand.

179. (1) Partition must be made only of such property as is available at

(4) where its sale is demanded and justified by the Partition Act."

(3) where the right is by its nature inalienable, or

(2) where the partition is speole will destroy its intrinsic value
or to otherwise inconvenient, or

next following—

share is speole and such partition may be made except in the circumstance

178. (1) Every person entitled to a share may demand the partition of his

Courts possessing the requisite jurisdiction."

(3) There, however, such property is situated within the juris-
diction of more than one Court, suits may be brought in the several

177. (1) "Except as otherwise provided in this behalf, a suit for partition
must relate to all property partible at the time and subject to the jurisdic-
tion of the Court in which the suit is instituted.

(2) Not a person in possession of any property under the joint family
is not a necessary party."

(2) All persons entitled to a share thereof are necessary parties.

176. (1) "Any person entitled to claim partition may sue for it.

co-parcenary interest does not suffice to effect separation."

Explanation.—"An act of a stranger such as attachment and sale of a
with others."

(f) Separate transactions of the co-parceners, between themselves

(e) Separate enjoyment of share.

(d) Agreement to divide the income in definite shares.

(c) Separate defalcation of income.

(b) Division of income.

(a) Change of communality and joint worship.

(g) Separate enjoyment of portions of the property, or of their
income.

(c) the thread and the marriage expenses of members payable by the joint family;

(d) and such religious and other ceremonies for which the joint property is liable."

181. "In a partition by metes and bounds the allotment of shares should be made as far as possible in conformity with the following rules:--

(1) The separate possession of co-parceners of any property or which they have improved at their own expense should not be disturbed.

(2) The predilection of co-parceners to any property should be respected.

(3) Shares should be made as compact and convenient as the nature of the property would allow.

(4) The bona fide transferee of a defined portion of co-parcenary property should be protected in his right as far as possible.

(5) Inequalities of shares may be removed by the payment of owelty."

182. (1) "In the absence of a contract to the contrary, the parties to a partition shall be deemed to contract with each other as follows:—

(a) that the interest in the property which each co-sharer received on partition as his share subsists;

(b) that there was no fraud or error in the allotment of shares.

(2) Save as above a partition once made cannot be re-opened.

(3) Provided that a party otherwise entitled to a relief on the ground of fraud, error or defect of title, may waive it by his acquiescence."

183. "In a suit for a general partition every member of the co-parcenary is liable to bring into hotch-pot all partible joint property."

184. (1) "Every partition is presumed to be completed both as to the parties and the property then liable to partition.

(2) Provided that on a partition made between two or more branches of a family such presumption does not extend to the severance of interest of all the branches thereof inter se; and in a partition between co-parceners such presumption does not extend to the severance of interest of their descendants."

185. "The following persons are entitled to claim their share of the property even after its partition:—

(1) A co-parcener who being conceived at the date of partition is subsequently born;

(2) any other son born after the partition if the father had reserved no share for himself;

(3) absent co-parcener;

(4) disqualified co-parcener on the removal of his disqualification for which he was excluded from partition;

(5) a son of such disqualified co-parcener born after the partition."

(c) the threat did the marriage expenses of members payable by the joint family;

(1) any such relations and other necessities for which the joint property is liable;

181. "In a partition by metes and bounds the allotment of shares should be made as far as possible in conformity with the following rules:—

(1) The separate possession of co-parceners of any property on which they have improved at their own expense should not be disturbed.

(2) The predilection of co-parceners to any property should be respected.

(3) Shares should be made as compact and convenient as the nature of the property would allow.

(4) The town villa residence of a defined portion of co-parcenary property should be protected in his right as far as possible.

(5) Inequalities of shares may be removed by the payment of equity."

182. (1) "In the absence of a contract to the contrary, the parties to a partition should be deemed to contract with each other as follows:—

(a) that the interest in the property which each co-sharer receives on partition as his share exclusive

(b) that there was no fraud or error in the allotment of shares;

(2) Save as above a partition once made cannot be re-opened.

(3) Provided that a party otherwise entitled to a relief on the ground of fraud, error or default of title, may waive it by his acquiescence."

183. "In a suit for a general partition every member of the co-parcenary is liable to bring into hotch-pot all partible joint property."

184. (1) "Every partition is presumed to be completed both as to the parties and the property than liable to partition.

(2) Provided that on a partition made between two or more branches of a family such presumption does not extend to the severance of interest of all the branches thereof inter se, and in a partition between co-parceners such presumption does not extend to the severance of interest of their descents."

185. "The following persons are entitled to claim their share of the property even after its partition:—

(1) A co-parcener who being conceived at the date of partition is subsequently born;

(2) any other son born after the partition if the father had reserved no share for himself;

(3) absent co-parceners;

(4) disqualified co-parcener on the removal of his disqualification for which he was excluded from partition;

(5) a son of such disqualified co-parcener born after the partition."

186. (1) "In a partition between the father and his sons an after-born son becomes entitled to his share on a re-partition if he was begotten before partition, but not otherwise.

(2) Where, however, in a partition the father had been allotted no share for himself, a son after-born, even though not then begotten, is entitled to his share out of the property already partitioned, if necessary by demanding a re-partition."

187. (1) "A decree for partition may be preliminary or final.

(2) A preliminary decree must determine and declare the shares of the several parties and order the same to be partitioned by a Commissioner, or in the case of a revenue-paying estate, by the Collector or his Gazetted subordinate.

(3) The final decree must be confirmatory of the distribution made by the Commissioner or the Collector with such variations as the Court may be competent and think fit to make."

## CHAPTER XV

## IMPARTIBLE ESTATES.

191. "An estate is impartible if it is incapable of division into two or more parts so as to confer upon the holders thereof rights equal to those possessed by the holder of the undivided whole."

192. "An estate is inalienable if the holder thereof for the time being is incompetent to alienate the whole or any part thereof to another so as to confer upon him the same right as he himself possessed therein."

193. (1) "An estate may owe its character of impartibility or inalienability to—

(a) any law for the time being in force;

(b) a grant of the sovereign power;

(c) its nature;

(d) custom; or

(e) an accretion thereto.

(2) An estate cannot be made impartible otherwise, merely by contract."

194. (1) "An estate may be impartible without being inalienable, and it may be inalienable without being impartible.

(2) An impartible estate is prima facie alienable, though it may be made inalienable in the same way as it is made impartible.

(3) Where an estate is inalienable the extent of its inalienability must be determined by the nature and source of its origin."

195. "An impartible estate is subject to the following incidents:—

(1) The estate is held by one person at a time.

CHAPTER XV

INCIDENTIAL ESTATES.

185. "An estate is impartible if it is incapable of division into two or more parts so as to confer upon the holders thereof rights equal to those possessed by the holder of the undivided whole."

186. "An estate is inalienable if the holder thereof for the time being is incompetent to alienate the whole or any part thereof to another so as to confer upon him the same right as he himself possessed thereby in."

187. (1) "An estate may vary in character of impartibility or inalienability to—

(a) any law for the time being in force

(b) a grant of the sovereign power

(c) the custom or

(d) usage or

(e) an execution thereto."

(2) An estate cannot be made impartible otherwise merely by contract."

188. (1) "An estate may be impartible without being inalienable, and it may be inalienable without being impartible."

(2) An impartible estate is prima facie alienable, though it may be made inalienable in the same way as it is made impartible.

(3) Where an estate is inalienable the extent of its inalienability must be determined by the nature and source of its origin."

189. "An impartible estate is subject to the following incidents—

(1) The estate is held by one person at a time.

(2) A preliminary decree must determine and declare the shares of the several parties and order the same to be partitioned; a Commissioner, or in the case of a revenue-paying estate, by the Collector or his Deputy subordinate.

(3) The final decree must be confirmatory of the distribution made by the Commissioner or the Collector with such variations as the Court may deem proper and right to make."

CHAPTER XV

INCIDENTIAL ESTATES.

185. "An estate is impartible if it is incapable of division into two or more parts so as to confer upon the holders thereof rights equal to those possessed by the holder of the undivided whole."

186. "An estate is inalienable if the holder thereof for the time being is incompetent to alienate the whole or any part thereof to another so as to confer upon him the same right as he himself possessed thereby in."

187. (1) "An estate may vary in character of impartibility or inalienability to—

(a) any law for the time being in force

(b) a grant of the sovereign power

(c) the custom or

(d) usage or

(e) an execution thereto."

(2) An estate cannot be made impartible otherwise merely by contract."

188. (1) "An estate may be impartible without being inalienable, and it may be inalienable without being impartible."

(2) An impartible estate is prima facie alienable, though it may be made inalienable in the same way as it is made impartible.

(3) Where an estate is inalienable the extent of its inalienability must be determined by the nature and source of its origin."

189. "An impartible estate is subject to the following incidents—

(1) The estate is held by one person at a time.

(2) A preliminary decree must determine and declare the shares of the several parties and order the same to be partitioned; a Commissioner, or in the case of a revenue-paying estate, by the Collector or his Deputy subordinate.

(3) The final decree must be confirmatory of the distribution made by the Commissioner or the Collector with such variations as the Court may deem proper and right to make."

(2) If the estate is not inalienable, the holder, for the time being is its sole owner and may relinquish, transfer or devise it at his discretion.

(3) The sons and brothers of the holders are entitled to maintenance, the right of other relations to maintenance being determined by custom.

(4) The heir-apparent has merely a spes successionis which he cannot partition, transfer or devise, nor is it liable to be sold in execution of a decree against him.

(5) Succession to the estate is ordinarily by primogeniture determined by the personal law adapted to the tenure.

(6) The successor takes the estate subject only to such burdens created, and the debts payable by his predecessor, as bind him under his personal law.

(7) The estate does not lose its incidents or impartibility by the mere discontinuance of service attaching thereto, or by the fact that it is regranted after confiscation."

196. (1) "Property acquired by the holder of an impartible estate out of its income does not partake of its character but is his self-acquisition unless it is intentionally incorporated with it.

(2) "An accretion so made to an impartible estate also becomes impartible."

197. (1) "All property is presumably partible and alienable.

(2) Impartibility and inalienability are the incidents of an estate which must be pleaded and proved in each case."

198. "In the absence of any law or custom to the contrary, succession to an impartible estate is subject to the personal law of the holder adapted to the nature of the tenure to the following extent:

(1) Succession is subject to the rule of primogeniture;

(2) where the holder is subject to the Mitakshara law, the heir is the eldest male issue of the deceased, or failing him, the eldest co-parcener;

(3) where it passes by survivorship from one line of descent to another, it devolves not on the co-parcener nearest in blood but on the nearest co-parcener of the senior line;

(4) females are presumably excluded from succession in favour of co-parceners if the estate is ancestral, but if it is a separate acquisition of the holder they are entitled to succeed;

(5) in a case subject to the Dayabhag school, the heir is the eldest member of the class of persons who are the next heirs of the deceased."

Explanation.-"In the absence of custom determining seniority according to the seniority of the mother, seniority in age amongst brothers alone determines the seniority, irrespective of the seniority of the mother."

## CHAPTER XVI

### GENERAL PRINCIPLES OF ALIENATIONS.

199. (1) "'Property' is anything which may be the subject of ownership.

(2) It may be moveable or immoveable."

200. "The term 'alienation' in this chapter includes any disposal by a person of any right in the property in whatever form, by any act or ommission, voluntary or involuntary, intended to take effect in praesenti or in future."

201. "Property of any kind may be transferred except as otherwise provided by any law for the time being in force and by the following clauses, namely:

(a) The chance of obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature;

(b) res extra commercium;

(c) co-parcenary interest, except to the extent hereinbefore allowed;

(d) maintenance grant;

(e) personal grant."

202. (1) "Where an absolute estate is given by a transfer or devise with a condition superadded which restricts the grantee's legal power of transfer or mode of enjoyment, the condition is void.

(2) Such are the conditions against alienation and partition of property or that the alienee should accumulate its income or submit to the control of certain trustees.

(3) But there is nothing illegal in the grantor stipulating that the grantee shall live in his house.

203. "A perpetuity cannot be created by transfer or devise except for religious and charitable purpose."

204. "A direction to accumulate income is valid if limited to the period during which the testator is entitled to direct and control the ccurse the course of devolution of property."

205. "The principle of election enacted in Ch. XXII (Ss. 180-190) of the Succession Act and S. 35 of the Transfer of Property Act applies to the transfers and bequest of a Hindu."

206. "A person may transfer or devise his self-acquired property."

207. (1) "Co-parcenary property may be alienated by the co-parceners' family, or with their consent by the manager.

(2) Where it is alienated by the manager otherwise than as provided in Section 129, the alienation binds him and such other co-parceners as have consented to or ratified the said alienation.

(3) The same rule applies to an alienation made by a Hindu widow or other limited female owner whose alienation would be valid if consented to or ratified by the next reversioner."

CHAPTER XVI

"GENERAL PRINCIPLES OF ALIENATION".

[illegible] (1) "Alienation" in anything which may be the subject of ownership.

(2) It may be personal or immovable."

322. "The term 'alienation' in this chapter includes any disposal of a person of any right in the property in whatever form, by way of commission, release, voluntary or involuntary, intended to take effect in presenti or in future."

323. "Property of any kind may be transferred--except as otherwise provided by any law for the time being in force and by the following clauses, namely:

(a) The chance of obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature

(1) res extra commercium

(2) so-personal interest, except to the extent hereinbefore allowed;

(3) maintenance grant;

(4) pension.

324. (1) "Where an absolute estate is given by a transfer or devise with a condition subsequent which restricts the grantee's legal power of transfer or else or else of alienation, the condition is void.

(2) Such are the conditions against alienation and partition of immovable property or that the alienee should accumulate its income or waive to the exercise of certain franchise.

(3) But there is nothing illegal in the transfer stipulating that the transfer shall live in his house."

325. "A perpetuity cannot be created by transfer or devise except for religious and charitable purpose."

326. "A direction to accumulate income is void if limited to the period during which the transfer is entitled to direct-and obtain the course the course of devolution of property."

327. "A direction to accumulate income is valid if limited to the period succeeding Act and 5. 34 of the Transfer of Property Act applies be the transfers and devisees of a Hindu."

328. "The principle of election enacted in 35. XXII (35. 180-184) of the [illegible] or with their consent in the manner."

329. (1) "Co-property property may be alienated by the co-parceners, jointly, or with their consent in the manner otherwise than as provided in Section 180, the alienation place its and such other co-parceners as have consented to or ratified the said alienation.

(2) Where it is alienated by the manner otherwise than as provided in Section 180, the alienation place its and such other co-parceners as have consented to or ratified the said alienation.

(3) The same rule applies to an alienation made by a Hindu widow to either limited female owner where alienation would be valid if executed is ratified by the next reversioner."

208. "An alienation of property other than Stridhan made by the heiress is valid if consented to or ratified by the next reversioner."

209. (1) "The manager, trustee, guardian, and the shebait are all entitled to transfer the property entrusted to their management, for the sake of necessity or benefit of the estate, or the family members, or the ward or the trust, as the case may be.

(2) The father of a joint family may transfer its property for the same purpose or for the satisfaction of his own antecedent debts.

(3) The widow and other female heirs possess similar powers of alienation for legal necessity or benefit of the estate, to the extent set out in Section 319."

211. "Nothing in the last section affects a bona fide alienee for consideration without notice otherwise protected in accordance with the provisions of Section 131."

## CHAPTER XVII

## TRUSTS, BENAMI TRANSACTIONS AND POWERS.

212. (1) "No form is necessary to create a trust for religious or charitable purposes.

(2) But a secular trust cannot be created otherwise than as provided in Section 5 and 6 of the Trusts Act."

213. "A trust may be created for any lawful purpose, whether secular or religious."

214. (1) "A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

(2) When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the official Trustee of the Presidency in which the office at which the insurance was effected is situated, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

(3) And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act XVII of 1864 (To Constitute an Office of Official Trustee), Section 10.

(4) Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditor."

215. (1) "A person does not acquire any interest in property by merely lending his name.

(2) Where one person holds property for another, he will be deemed to hold it in trust for the other."

208. "An alienation of property other than Stridhan made by the helpless is valid if consented to or ratified by the next reversioner."

209. (1) "The manager, trustee, guardian, and the chelait are all entitled to transfer the property entrusted to their management, for the sake of necessity or benefit of the estate, or the family members, or the ward or the trust, as the case may be.

(2) The father of a joint family may transfer its property for the same purpose or for the satisfaction of his own antecedent debts.

(3) The widow and other female heirs possess limited powers of alienation for legal necessity or benefit of the estate, to the extent set out in Section 210."

211. "Nothing in the last section affects either the liability for unreasonable alienation without notice otherwise protected in accordance with the provisions of Section 181."

## CHAPTER XVII

## TRUSTS, BENAMI TRANSACTIONS AND POWERS.

212. (1) "No form is necessary to create a trust for religious or charitable purposes."

(2) But a secular trust cannot be created otherwise than as provided in Section 5 and 6 of the Trusts Act."

213. "A trust may be created for any lawful purpose, whether secular or religious."

214. (1) "A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

(2) When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the official Trustee of the Presidency in which the office at which the insurance was effected is situated, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

(3) And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act XVII of 1864 (To Constitute an Office of Official Trustee), Section 10.

(4) Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditor."

215. (1) "A person does not acquire any interest in property by merely locating his name.

(2) Where one person holds property for another, he will be deemed to hold it in trust for the other."

216. (1) "Save as provided in Section 125, there is no presumption in favour of Benami, and he who alleges that the apparent title is not the real title must prove it.

(2) There is no presumption that a purchase made by a Hindu or a Mahomedan in the name of his child, wife or mistress is by way of advancement, the question being one of intention which must be proved by the party alleging it; but such presumption shall be made where the purchaser is a British resident in India."

217. (1) "'Power' is a right which a person acquires over another, or over things not his own.

(2) The person who confers the power may be called the donor of the power, and the person upon whom it is conferred, the donee of the power.

(3) The exercise of power is discretionary with the donee."

## CHAPTER XVIII

## GIFTS AND GRANTS.

218. (1) "'Grant' is the passing of an interest in one's property to another.

(2) The person who creates such interest may be called the grantor, and the person in whose favour the interest is created, the grantee.

(3) A grant includes a gift; but a grant may not amount to the transfer of an interest in property."

219. "'Gift' is the transfer of property made voluntarily and without exchange for money or money's worth."

220. (1) "A grant may be made in any of the modes and to the extent allowed by law.

(2) Whenever a grant amounts to a gift as hereinbefore defined it can only be made by a registered instrument the execution of which must be attested by two or more witnesses.

(3) A grant, when it is not coupled with a transfer of property, and is not subject to the provisions of the Transfer of Property Act, may be made without writing."

221. "Any adult may make a gift of his property or any interest therein over which he possesses disposing power."

222. (1) "A gift of moveable property must be accompanied by delivery.

(2) And a gift of immoveable property must be made in the form prescribed by Section 123 of the Transfer of Property Act."

223. "Subject to the provisions of Ss. 13, 14 and 20 of the Transfer of Property Act, 1882, a settlement, gift, or devise may be made in favour of a person not in existence at the date of the gift."

224. (1) "A settlement, gift or devise to an unborn person may be made as provided by the Hindu Disposition of Property Act, or in the Madras Presidency as provided by the Madras Hindu Transfers and Bequests Act.

CHAPTER XVIII

GIFTS AND CHARITY.

218. (1) "Grant" is the passing of an interest in one's property to another.

(2) The person who creates such interest may be called the grantor, and the person in whose favour the interest is created, the grantee.

(3) A grant includes a gift, but a grant may not amount to the transfer of an interest in property."

219. "Gift" is the transfer of property made voluntarily and without consideration for money or money's worth."

220. (1) "A grant may be made in any of the modes and to the extent allowed by law."

(2) However a grant amounts to a gift as hereinbefore defined it can only be made by a registered instrument the execution of which must be attested by two or more witnesses.

(3) A grant, when it is not coupled with a transfer of property, and is not subject to the provisions of the Transfer of Property Act, may be made without writing."

221. "Any adult may make a gift of his property or any interest therein over which he possesses disposing power."

222. (1) "A gift of movable property must be accompanied by delivery.

(2) Any a gift of immovable property must be made in the form prescribed by Section 123 of the Transfer of Property Act."

223. "Subject to the provisions of Ss. 17, 14 and 20 of the Transfer of Property Act, 1882, a restricted gift, or devise may be made in favour of a person not in existence at the date of the gift."

224. (1) "A restricted gift or devise to an unborn person may be made as provided by the Hindu Disposition of Property Act, or in the Native Provinces as provided by the Native Civil Transfers and Bequests Act.

(2) Provided that no restriction contained in these Acts shall limit or affect a disposition of property for a religious or charitable endowment or for the benefit of the public, for the advancement of knowledge, commerce, health, safety or any other object beneficial to mankind."

225. (1) "A gift or devise may be absolute or conditional.

(2) A conditional gift or devise takes effect upon the fulfilment of the condition, except in the following cases:

(a) Where the condition is a condition subsequent;

(b) where it is illegal or immoral, or

(c) where it is repugnant to the nature of the grant.

(3) A substantial fulfilment of the condition may be sufficient if its literal fulfilment is impossible or impracticable.

(4) A gift once completed cannot be revoked except on a ground which would suffice to cancel a contract."

## CHAPTER XIX

## WILLS.

226. (1) "'Will' is the expression of a person's wish with reference to his property which he desires to be carried into effect after his death.

(2) Where the Will is in writing, it may be modified by an instrument, made in relation thereto and explaining, altering or adding to its dispositions. This instrument is called a 'Codicil'. It shall be treated as forming an additional part of the Will."

227. (1) "Any adult person may bequeath his estate by Will.

(2) His power to bequeath an estate by Will is co-extensive with his power over the estate in his lifetime."

228. (1) "A Will executed after the first day of January 1927 can only be made subject to the provisions of Section 63 of the Indian Succession Act, 1925, that is to say, it must be in writing and attested by two or more witnesses as therein provided.

(2) A Will executed before the first day of January 1927 may be oral or in writing and, if in writing, it need not be attested or registered.

(3) Provided that all Wills and Codicils made, after the first day of September, 1870, by a Hindu, Buddhist, Sikh or Jain, in or relating to immoveable property situated within the province of Bengal or within the local limits of the Ordinary Original Civil Jurisdiction of the High Courts of Judicature of Madras and Bombay, shall be made only subject to the provisions of Section 57 (1) and Schedule III of the Indian Succession Act, 1925."

Exception.--"Nothing herein applies to the privileged Will of an adult soldier employed in an expedition or engaged in actual warfare, or of a mariner at sea, which may be executed as provided in Section 66 of the Succession Act."

(2) Provided that no restriction contained in these Acts shall limit or affect a disposition of property for a religious or charitable purpose or for the benefit of the public, for the advancement of knowledge, commerce, health, safety or any other object beneficial to mankind."

(1) "A gift or devise may be absolute or conditional.

(2) A conditional gift or devise takes effect upon the fulfilment of the condition, except in the following cases:

(a) where the condition is a condition subsequent;

(b) where it is illegal or immoral, or

(c) where it is repugnant to the nature of the grant.

(3) A suspensional fulfilment of the condition may be sufficient if its literal fulfilment is impossible or impracticable.

(4) A gift once completed cannot be revoked except on a ground which would suffice to cancel a contract."

## CHAPTER XIX

### WILLS.

Use. (1) "Will" is the expression of a person's wish with reference to his property which is desired to be carried into effect after his death.

(2) Where the Will is in writing, it may be modified by an instrument made in relation thereto and explaining, altering or adding to its dispositions. This instrument is called a "Codicil". It shall be treated as forming an additional part of the Will."

Use. (1) "Any adult person may dispose of his estate by Will.

(2) His power to dispose of estate by Will is co-extensive with his power over the estate in his lifetime."

Use. (1) "A Will executed after the first day of January 1925 can only be made subject to the provisions of Section 63 of the Indian Succession Act, 1925, that is to say, it must be in writing and attested by two or more witnesses as therein provided.

(2) A Will executed before the first day of January 1925 may be oral or in writing and, if in writing, it need not be attested or registered.

(3) Provided that all Wills and Codicils made, after the first day of September, 1927, by a Hindu, Buddhist, Sikh or Jain, in or testate to immovable property situated within the province of Bengal or within the local limits of the Ordinary Original Civil Jurisdiction of the High Courts of Judicature at Madras and Bombay, shall be made only subject to the provisions of Section 57 (1) and Chapter III of the Indian Succession Act, 1925."

Exception.--Mobile person eligible to the privileges Will of an adult soldier employed in an expedition or engaged in actual warfare, or of a mariner at sea, which may be executed as provided in Section 66 of the Succession Act."

229. (1) "A Will made in accordance with the provisions of Sections 57 and 63 of the Succession Act, must be proved as therein required.

(2) A Will otherwise executed must be proved so as to show that it is a complete instrument and expresses the deliberate intentions of the testator.

(3) The words of an oral Will must be proved with the utmost precision, with every circumstance of time and place."

230. (1) "The maker of a Will may revoke it at any time.

(2) Subject to any law for the time being in force, such revocation may be oral, though the Will itself be in writing.

(3) The subsequent marriage of the testator, or the birth or adoption of a son, has not the effect of revocation; nor does the subsequent execution of another Will necessarily have that effect except so far as it is inconsistent with its terms."

Explanation.—"A written Will may be revoked by parol though the Will itself is not destroyed."

231. (1) "A Will or any part thereof is void if it is brought about by coercion, fraud, undue influence, misrepresentation or by such importunity as deprives the maker of his free will.

(2) And if the maker of a Will is induced by the same means to alter or revoke his Will, or is prevented from altering it, the alteration or revocation shall be void, or the intended alteration shall take effect."

Explanation.—"The importunity, undue influence and misrepresentation under this section must be such as amounts to fraud or force, destroying the free agency of the testator."

232. (1) "The burden of proving a Will lies upon the person who propounds it and not upon the person who impeaches it.

(2) Such proof must comprise not only proof of due execution, but also that the executant was of a sound disposing mind, though if nothing appears to the contrary, this may be presumed."

Explanation.—"A person is said to possess a disposing mind if he possesses sufficient understanding and reason to be able to form an intelligent judgment as to the disposal of his property."

## CHAPTER XX

## CONSTRUCTION OF GIFTS AND WILLS.

233. "In this chapter, unless there is anything repugnant in the subject or context, the term 'Deed' includes a 'Will'."

234. "Deeds must be liberally construed so as to give effect to the grantor's intention ascertainable, as far as possible, without the aid of any artificial rules of construction."

235. (1) "A grant or bequest prima facie conveys the entire interest of the grantor unless it is limited expressly or by necessary implication.

CHAPTER XX

CONSTRUCTION OF WILLS AND WRITS.

[illegible]

(2) But a gift or devise to a female relation suffices only to convey a limited estate though an absolute estate may be conveyed by apt words conveying the power of alienation."

236. "A gift or devise creating an estate of inheritance inconsistent with the general law of inheritance is void to that extent."

237. "Where an interest is gifted or devised to a class some of whom are incapable of taking by reason of any rule of law or otherwise, the gift or devise will take effect as to the rest."

238. (1) "A Will must be construed according to its true intent and purpose giving effect to the actual intention of the testator unaided by any rules of technical construction.

(2) Without prejudice to the generality of the foregoing principle, the construction of Wills made by persons subject to the Hindu Wills Act (now re-enacted as S. 57 (1) and Schedule III of the Succession Act) is subject to the rules set out in Schedule III of the Succession Act, and principally those set out in the next following sections.

(3) The construction of other Wills is not subject to the aforesaid or any other statutory provisions."

239. "Extrinsic evidence is inadmissible to alter, detract from, or add to the terms of a Will, though it may remove a latent ambiguity arising from words equally descriptive of two or more subjects or objects of gift."

240. "The surrounding circumstances under which the devisor made his Will—as the state of his property, of his family and the like—are admissible."

241. "Where a specific charitable bequest fails for uncertainty in the object, and there is no direction, upon its failure, that the bequest should go to the residue, the Court will apply the gift cy pres, that is to say, to other objects, as nearly as may be, of a similar character."

242. (1) "All words must be construed in their ordinary popular sense unless there is a clear indication that they are used in another sense.

(2) Technical terms must be presumed to bear their legal sense, unless the context clearly indicates the contrary:

(3) Provided that before so construing, due regard must be had to the infirmity of the scribe if a layman, and his familiarity with the expressions used by him."

243. "The construction must be uniform, the same words being construed in the same sense, unless a contrary intention appears by the context, or unless the words be applied to a different subject."

244. (1) "Of two modes, preference must be given to the construction which gives effect to every expression.

(2) But where two or more clauses are repugnant in a deed or Will, the first in the deed and the last in the Will shall prevail."

245. "That construction must be preferred which will prevent a total intestacy."

246. "The construction is not to be varied by events subsequent to the execution."

(2) But a gift or devise to a female relation suffices only to convey a limited estate though an absolute estate may be conveyed by another words conveying the power of alienation."

230. "A gift or devise creating an estate of inheritance inconsistent with the general law of inheritance is void to that extent."

231. "Where an interest is gifted or devised to a class some of whom are incapable of taking by reason of any rule of law or otherwise, the gift or devise will take effect as to the rest."

232. (1) "A Will must be construed according to its true intent and purpose giving effect to the actual intention of the testator unaided by any rules of technical construction.

(2) Without prejudice to the generality of the foregoing principle, principally those set out in the next following sections

(3) The construction of other Wills is not subject to the aforesaid or any other statutory provisions."

233. "Extrinsic evidence is inadmissible to alter, detract from, or add to the terms of a Will, though it may remove a latent ambiguity arising from words capable of two or more subjects or objects of gift."

234. "The surrounding circumstances under which the devisor made his Will--as the state of his property, of his family and the like--are admissible."

235. (1) "All words must be construed in their ordinary popular sense unless there is a clear indication that they are used in another sense, to any, to other objects, as nearly as may be, of a similar character."

(2) Provided that before no construction, due regard must be had to the intimacy of the scribe if a layman, and his familiarity with the expressions used by him."

236. "The construction most favourable to the persons making bequests in the same sense, unless a contrary intention appears by the context, or unless the words be applied to a different subject."

237. "The construction must be uniform, the same words being construed in the first in the mood and the last in the Will shall prevail."

(2) But where two or more clauses are repugnant in a deed or Will, which gives effect to every expression."

238. (1) "CF two modes, preference must be given to the construction

239. "That construction must be preferred which will prevent a total intestacy."

240. "The construction is not to be varied by events subsequent to the execution."

247. "Where a testator's intention cannot operate to its full extent, it shall take effect as far as possible."

248. (1) "Probate of a Will may be obtained by an executor appointed by the Will.

(2) The grant of probate is subject to the provisions of Ss. 211-369 of the Succession Act.

(3) The probate of a Will only establishes its factum but not its validity which must be otherwise established."

## CHAPTER XXI

## RELIGIOUS AND CHARITABLE ENDOWMENTS.

249. (1) "'Endowment' is the dedication of property by a grant, gift or devise to religious or charitable uses.

(2) An endowment must be certain both as to the subject and the object.

(3) The dedication of property to an endowment may be partial or complete.

(4) It is partial when there is merely a charge or trust created.

(5) It is complete when the property is dedicated absolutely and no person has reserved any beneficial interest therein."

Explanation.—"An endowment is distinguished from a bequest in that its operation is perpetual and the object general."

250. (1) "A religious endowment is one which has for its object the establishment, maintenance or worship of an idol, diety or any other object or purpose subservient to religion.

(2) A charitable endowment is one which has for its object the benefit of the public or of mankind.

(3) No endowment is valid except when made in accordance with the rules hereinafter stated in this chapter.

251. (1) "A religious endowment may be public or private.

(2) A public religious endowment is the dedication of property for the use or benefit of the public.

(3) A private religious endowment is the dedication of property for the establishment or maintenance or worship of a family god or other object in which the public are not interested."

252. (1) "An endowment may be created by an oral dedication by a person divesting himself of specific property for religious or charitable uses.

(2) But where it is created by a Will, such Will must be in writing and attested as provided in Section 228 (1)."

Explanation 1.—"No express words are necessary to create an endowment."

Explanation 2.—"A trust is not necessary to create an endowment; all that is necessary is a dedication which may be partial or complete."

253. "Any property which a person can dispose of by gift or Will may form the subject of an endowment."

254. "An endowment may be created in favour of an idol, muth or other object, not in existence at the death of the testator."

255. (1) "In the absence of anything appearing to the contrary, the beneficial interest in dedicated property vests in the religious or charitable object, while the trustee or manager is only entitled to its possession and management.

(2) Debutter property is property dedicated to a god or gods. The trustee or manager of such property is a trustee, by whatever name he may be called, whether a Sarbarakar, Shebait, Dharm Karta or Mahant."

256. "An endowment takes effect from the moment of its dedication."

257. "An endowment is illusory and void if it is a devise to preserve the estate to the family of the endower, or defraud, defeat or delay his other claimants or creditors."

258. "No endowment can be made, the purpose or object of which is illegal."

259. (1) "An endowment once completed is both irrevocable and unalterable

(2) Provided that an endowment in favour of a family idol may be revoked, altered or transferred by the consensus of the family."

260. (1) "No person is disqualified by reason of his caste or sex to be appointed a manager.

(2) A female is not disqualified, by reason of her sex, from holding a priestly office, though she might not be competent to perform its spiritual duties."

261. (1) "The founder is entitled to provide for the management of any endowment created by him.

(2) He may nominate a shebait and provide for his succesor and effect will be given to his wishes if not inconsistent with the general law.

(3) Where the founder makes an endowment without providing for its management, the right of management vests in the founder and his heirs.

(4) The right of the founder to provide for the management devolves upon his heirs on his death.

(5) The Court may appoint a manager in the last resort."

262. "The manager of an endowment is charged with the following duties:—

(1) He must carry out the founder's direction, if any, as to the management of the property.

(2) He must maintain the customary usages of the institution.

(3) He is entitled to the possession of all endowed property; and as shebait, he is entitled to the custody of the idol and all its paraphernalia.

(4) He must maintain accounts of the trust and is entitled to an indemnity for anything of his own spent thereon.

(5) He may retain or apply the surplus as may be usual or customary.

(6) He may improve the property out of its surplus.

(7) He is accountable to the founder, and in his absence, his legal representatives.

(8) He is entitled to sue and is liable to be sued on behalf of the trust."

263. (1) "In the absence of any custom or usage to the contrary, the rights and liabilities of the manager of an endowment are those of the guardian of a minor's estate, that is to say, he may incur debts, charge or alienate the corpus of an endowment if justified by legal necessity or its benefit.

(2) Property belonging to an endowment may be attached and sold in execution of a decree obtained against the manager, as such.

(3) Any person interested in the endowment may sue to set aside an improper alienation of its property by the manager.

(4) Any person suing to enforce an alienation made by the manager must prove both its factum and necessity."

Explanation 1.—"The term 'manager' in Clause (1) includes any person actually filling that character, whatever may be the defect in his appointment."

Explanation 2.—"The term 'manager' in Clause (1) means and includes a Shebait, trustee or Mahant of a muth, and any other person by whatever name called, provided he discharges the duties of the manager."

264. "The office of manager is inalienable except to the following extent:

(1) The manager of a private endowment may transfer it with the consent of the founder or his whole family.

(2) In other cases, it may be relinquished, if allowed by the terms of the foundation or usage, in favour of a member of the family, or failing such member, a stranger eligible to discharge the duties of the office.

(3) Provided that notwithstanding any usage, no transfer can be made for the pecuniary benefit of the transferor or which is incompatible with the interest of the trust."

265. "A manager may be removed from his office for any misconduct which is incompatible with the interest of the endowment."

266. (1) "Beneficiaries are persons for whose spiritual or temporal advancement an endowment is created. It includes an idol to whom, or any other object for which, the property is dedicated.

(2) The beneficiaries are interested in seeing that the endowment is maintained and its legitimate functions preserved.

(3) Worshippers and devotees of an idol or other sacred object or institution are entitled to resort to it at all reasonable hours for the purpose of worship and devotion.

(4) The manager is bound to afford them reasonable facilities for that purpose.

(4) He must maintain accounts of the trust and is entitled to an indemnity for anything of his own spent thereon.

(5) He may retain or apply the surplus as may be usual or customary.

(6) He may improve the property out of its surplus.

(7) He is accountable to the trustee, and in his absence, his legal representatives.

(8) He is entitled to sue and is liable to be sued as nominal cf the trust."

305. (1) "In the absence of any custom or usage to the contrary, the rights and liabilities of the manager cf an endowment are those of the guardian of a minor's estate, that is to say, he may incur debts, charge or alienate the corpus of an endowment if justified by legal necessity or its benefit.

(2) Property belonging to an endowment may be attached and sold in execution of a decree obtained against the manager, as such.

(3) Any person interested in the endowment may sue to set aside an improper alienation of its property by the manager.

(4) Any person suing to enforce an alienation made by the manager

Explanation 1.—The term 'manager' in Clause (1) means and includes a Dharmadhikari, trustee or Mahant of a math, and any other person by whatever name called, invested or charged the duties of the manager."

306. "The office of manager is inalienable except to the following extent:

(1) The manager of a private endowment may transfer it with the consent of the founder or his whole family.

(2) In other cases, it may be relinquished, if allowed by the terms of the foundation or usage, in favour of a member of the family, or failing such member, a stranger eligible to discharge the duties of the office.

(3) Provided that reinstatement and usage, no transfer can be made for the pecuniary benefit of the transferor or which is incompatible with the interest of the trust."

307. "A manager may be removed from his office for any misconduct which is incompatible with the interest of the endowment."

308. (1) "Beneficiaries are persons for whose spiritual or temporal advancement an endowment is created. It includes an idol to whom, or any other object for which, the property is dedicated.

(2) The beneficiaries are interested in seeing that the endowment is maintained and its legitimate functions preserved.

(3) Worshippers and devotees of an idol or other purpose object or institution are entitled to expect to it at all reasonable hours for the purpose of worship and devotion.

(4) The manager is bound to afford them reasonable facilities for that purpose.

(5) Beneficiaries are jointly and severally, as the case may be, entitled to participate in the benefit of the endowment created and maintained for their benefit."

Explanation.—"Nothing contained in this section applies to private endowments."

267. "Public, religious and charitable endowments are subject to the following statutory control:—

(1) Any two or more persons interested therein may maintain a suit in accordance with the procedure prescribed in S. 92 of the Code of Civil Procedure, 1908; and

(2) Any person so interested may sue alone in a case arising under the Religious Endowments Act, 1863; or

(3) He may, by a petition filed under the provisions of the Charitable and Religious Trusts Act, 1920, obtain information regarding it.

(4) Such suit or petition does not affect a suit otherwise maintainable."

## CHAPTER XXII

## LAW OF SURVIVORSHIP.

268. "Nothing in this chapter applies to members of a Dayabhag family who take by inheritance, and not by survivorship."

269. (1) "When a person dies possessed of co-parcenary property, his interest therein passes to the other co-parceners then living, by right of survivorship, who take it in their own right and not in trust for the heirs of the deceased.

(2) Provided that where he has left sons or grandsons in the male line his interest survives to them to the exclusion of his other co-parceners.

(3) Where such property passes to the surviving co-parceners, they take per stirpes and not per capita."

270. "Members of a joint family inheriting the ancestral or the self-acquired property of their ancestor, whether the heritage be obstructed or un-obstructed, take the estate subject to the rule of survivorship."

271. (1) "Where the deceased was at his death the sole co-parcener, his estate devolves upon his heirs in the same manner as if it were his separate property.

(2) Provided that where widows or daughters (except in the Maharashtra) inherit to the deceased, they acquire, as between themselves, the right of survivorship."

272. (1) "Where, on a partition of joint property, some property remains undivided, such property, including all its accretions, will, as regards devolution, continue to be subject to survivorship.

(2) In such cases it is immaterial whether the property was designedly or accidentally left undivided, or the person in whose possession it remained, and whether the surviving member was or was not a party to the partition."

(2) Beneficiaries are jointly and severally, as the case may be, entitled to participate in the benefit of the endowment created and maintained for their benefit."

Application.—Nothing contained in this section applies to private endowments."

"Public" religious and charitable endowments are subject to the following statutory control:—

(1) Any two or more persons interested therein may maintain a suit in accordance with the procedure prescribed in S. 92 of the Code of Civil Procedure, 1908; and

(2) Any person so interested may sue alone in a case arising under the Religious Endowments Act, 1863; or

(3) He may, by a petition filed under the provisions of the Charitable and Religious Trusts Act, 1920, obtain information regarding it.

(4) Such suit or petition does not affect a suit otherwise maintainable."

CHAPTER XXII

LAW OF MARRIAGE.

249. "Nothing in this chapter applies to members of a Hindu family who take by inheritance, and not by survivorship."

250. (1) "When a person dies possessed of co-parcenary property, his interest thereon passes to the other co-parceners upon living, by right of survivorship, who take it in their own right and not in trust for the heirs of the deceased.

(2) Provided that where he has left none of kindred in the male line his interest survives to them to the exclusion of his other co-parceners.

(3) Where such property passes to the surviving co-parceners, they take for estates and not for shares."

251. (1) "Where the deceased was at the death the sole co-parcener, his estate devolves upon his heirs in the same manner as if it were his separate property."

(2) Provided that where widows or daughters (except in the Maharashtra) inherit to the deceased, they acquire, as tenants in common, the rights of survivorship."

252. "Members of a joint family inherit from the deceased or the self-acquired property of their ancestor, whether the partners be distinct or unconverted, take the estate subject to the rule of survivorship."

253. (1) "Where the deceased was at the death the sole co-parcener, his estate devolves upon his heirs in the same manner as if it were his separate property."

(2) Provided that where widows or daughters (except in the Maharashtra) inherit to the deceased, they acquire, as tenants in common, the rights of survivorship."

254. "Members of a joint family inherit from the deceased or the self-acquired property of their ancestor, whether the partners be distinct or unconverted, take the estate subject to the rule of survivorship."

273. "On the death of a co-parcener in the United Provinces, Oudh, Bihar and the Punjab the surviving members acquired a right to eject a purchaser, or other alienee for valuable consideration, of his interest, not being a purchase for legal necessity or benefit of the family or otherwise such binds it."

274. "The survivors as such are not liable for the debts and other personal obligations of the deceased co-parcener, nor are they liable for the gift or devise of his co-parcenary interest."

Explanation 1.—"The liability of the son to pay his father's debts, not illegal or immoral, arises from his relationship to the father and not by reason of his co-parcenership."

Explanation 2.—"Nothing herein applies to the debts or other obligations of the deceased co-parceners binding on the joint estate as in cases of debts incurred for the family necessity or for its benefit, or for the purposes of the family trade, or where the debt of the deceased co-parcener was charged on his co-parcenary interest, or his interest attached in his lifetime."

275. "Members of a joint family succeeding to the interest of a deceased co-parcener by their right of survivorship are entitled to realize all debts and dues due to the joint estate and payable to the deceased member, without having to obtain a succession certificate required by Section 214 of the Succession Act."

276. "The right of survivorship may be determined by contract or conduct evidencing its discontinuance."

## CHAPTER XXIII

## GENERAL PRINCIPLES OF INHERITANCE.

277. "No person can alter the course of inheritance prescribed by law except to the extent permitted by it."

278. (1) "The heir succeeds in his own right and not in a right derived from another.

(2) On a property descending to a male heir, he becomes a fresh stock of descent and the property passes to his own heir and not to the heir of any previous owner.

(3) But where property descends to a female heir, her heirs are those of the last full owner, except in Bombay, where the female heir becomes a fresh stock of descent."

279. (1) "On the death of the owner the estate vests immediately in the heir then living.

(2) The inheritance cannot be held in abeyance except when the heir is in the womb."

280. "On the vesting of the inheritance the heir becomes entitled to all property which was vested in the deceased in title or in possession, though its enjoyment by the deceased may have been postponed."

281. "An estate once vested cannot be devested except in the following cases:

(a) Where the estate has vested in the widow, upon whose adoption of a son her own estate is devested.

CHAPTER XXIII

GENERAL PRINCIPLES OF INHERITANCE.

(b) By the posthumous son of a father, who, if born when the inheritance opened, would have had a preferential claim to the estate."

282. "The right of a person to succeed to another is a mere contingency which cannot be transferred, or devised, or be the subject of a valid contract."

283. "Illegitimacy creates no legal relationship between the parents and their offspring, and is therefore a bar to inheritance, except in the cases hereinafter provided, that is to say:

(a) Illegitimate children inherit their mother's stridhan in accordance with the rule stated in Section 354.

(b) The illegitimate son of a Shudra is his heir in accordance with the rule stated in Section 299 (5)."

284. (1) "No heirship to another can be claimed by or through a person who has been a privy to his murder.

(2) A person who has displayed malignant hostility, cannot inherit his estate."

285. (1) "A person who is and has been congenitally a lunatic or an idict, is disqualified from inheritance.

(2) Save as above no person is so disqualified by reason only of any disease, deformity or physical or mental defect.

(3) Provided, however, that nothing herein shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust, which he would not have had, independently of the Hindu Inheritance (Removal of Disabilities) Act, 1928."

286. (1) "Women are excluded from inheritance unless their claim is supported by special texts or local usage.

(2) And save as provided in Section 304 (4), a female heir presumably takes, whether by inheritance, gift or devise, only a limited interest in her estate which, on her death, reverts to the heir of the last full owner."

287. (1) "The widow whose remarriage is legalized by the enactment of the Hindu Widows' Remarriage Act, 1856, forfeits, as therein provided, her right to the estate of her husband and his lineal successor.

(2) Save as above, or as otherwise provided by custom, the widow's right to inheritance is not affected by her remarriage."

288. (1) "Subject to the provisions of Section 353, the widow is disqualified from inheritance if she was unchaste when the succession opened.

(2) But under the Dayabhad law, this disqualification extends generally to all female heirs."

289. "When an heir is disqualified, the next heir of the deceased succeeds, but the disqualified heir is entitled to maintenance for himself and his family."

290. "No Court shall enforce the disqualification of an heir resulting from his renouncing or having been excluded from the communion of any religion, or being deprived of caste."

(3) By the forthcoming son of a father, who, if born when the inheritance opened, would have had a preferential claim to the estate."

262. "The right of a person to succeed to another is a mere contingency which cannot be transferred, or levied, or is the subject of a valid contract."

263. "Illegitimacy creates no legal relationship between the parents and their offspring, and is therefore a bar to inheritance, except in the cases hereinafter provided, that is to say:-

(a) Illegitimate children inherit their mother's estate in accordance with the rule stated in Section 259.

(b) The illegitimate son of a Hindu is his heir in accordance with the rule stated in Section 259 (2)."

264. (1) "No heirship to another can be claimed by or through a person who has been a party to his murder."

(2) A person who has disqualified himself by reason only of any disease, deformity or physical or mental defect,

[illegible] inherit, is disqualified from inheritance.

265. (1) "A person who is not born [illegible] in India or on his estate."

(2) Save as above no person is so disqualified by reason only of any [illegible] inherit."

266. (1) "Persons who are excluded from inheritance [illegible] by special rules or local usage."

267. (1) "The widow [illegible] by the enactment of the Hindu Widows' Remarriage Act, 1856, foreiets, as therein provided, her right to the estate of her husband and his lineal successors."

(2) Save as above, or as otherwise provided by custom, the widow's right to inheritance is not affected by her remarriage."

268. (1) "Subject to the provisions of Section 263, the widow is disqualified from inheritance if she was unchaste when the succession opened."

(2) But under the Dayabhaga law, this disqualification extends generally to all female heirs."

269. "When an heir is disqualified, the next heir of the [illegible] succeeds, but the disqualified heir is entitled to maintenance for himself and his family."

270. "No Court shall enforce the disqualification of an heir resulting from his renouncing or having been excluded from the communion of any religion, or being deprived of caste."

291. (1) "Notwithstanding anything contained herein, succession to the property of any person married under the provision of the Special Marriage (Amendment) Act, 1923, shall be regulated by the provisions of the Succession Act.

(2) Provided that his own right of succession to the property of another shall be determined as if he had not contracted such marriage."

## CHAPTER XXIV

### THE MITAKSHARA INHERITANCE TO MALES.

292. (1) 'Propositus' means the person from whom a descent is traced.

(2) 'Last full owner' means one who held the property absolutely at the time of his death."

293. "In this chapter the 'Sapindas' of a person includes:

(a) His male relations related to him directly or through a common ancestor, as the case may be, in ascent or descent not more than seven degrees distant in the male line or five in the female line inclusive of himself and the relation concerned; and

(b) his wife, daughter, and daughter's son, and the wives of his six ascendants; and

(c) such of his other relations as are described in Section 297."

294. (1) "'Sapindas' are of two classes: (a) 'Gotraj' and (b) 'Bandhus'.

(2) 'Gotraj' comprises 'Gotraj Sapindas' and 'Samanodaks'."

295. "'Gotraj Sapindas' are all agnatic relations of a person in the male line of ascent or descent not more than seven degrees distant from him or from a common male ancestor inclusive of himself and the relation concerned.

They are also called 'Saman Gotraj Sapindas'."

296. "'Samanodaks' are agnatic relations of a person in the male line of ascent or descent from the seventh degree to the fourteenth degree distant from him or from a common male ancestor inclusive of himself and the relation concerned, and even beyond the fourteenth degree, if such relationship be clearly established."

297. (1) "A 'Bandhu' is a person related to the Propositus through a female directly or through a common paternal or maternal ancestor within five degrees of him or the common ancestor, inclusive of himself and the relation concerned.

They are also known as the Bhinna Gotraj Sapindas.

(2) Bandhus may be—

(a) 'Atma Bandhus,' that is, one's own Bandhus.

(b) 'Pitri Bandhus,' that is, the father's Bandhus.

(c) 'Matri Bandhus,' that is, the mother's Bandhus."

(b) Provided that his own rights or succession to the property of another shall be determined as if he had not contracted such marriage."



THE MATRIMONIAL JURISDICTION OF MAGOG.

205. (1) 'Proposition' means the person from whom a descent is traced.

(2) 'Last full owner' means the holder the property absolutely at the time of his death."

206. "In this chapter the 'Duplains' of a person include

(a) His male relations related to him directly or through a common ancestor, as the case may be, in nearer or more than seven degrees distant in the male line or five in the female line inclusive of himself and the relations mentioned in

(b) his wife, daughter, and daughter's son, and the wives of his male descendants and

(c) such of his other relations as are described in Section 207."

207. (1) "Disputed" has the same meaning in "Duplains" and (2) "Duplains" comprises "Direct Duplains" and "Ascendants."

208. "Direct Duplains" are all agnatic relations of a person in the male line of descent or descent from more than seven degrees distant from him or from a common male ancestor inclusive of himself and the relation concerned, and over-leaped the fourteenth degree, in such relationship to clearly established."

209. (1) "A 'Pendhu' is a person related to the Proposition through a female directly or through a common paternal or maternal ancestor within the degree of him or the common ancestor, inclusive of himself and the relation concerned.

They are also known as the Minus Direct Duplains.

(2) Pendhus may be—

(a) 'Alter Pendhus,' that is, one's own Pendhus.

(b) 'First Pendhus,' that is, the father's Pendhus.

(c) 'Third Pendhus,' that is, the mother's Pendhus.

298. "The heirs of a deceased person are the following, who, subject to the other provisions hereinafter contained in this behalf, succeed in the order given below:

(1) Gotraj Sapindas. (2) Samanodaks. (3) Bandhus. (4) Spiritual Preceptor. (5) Pupil. (6) Fellow Student. (7) The Crown."

299. "The issue of the deceased inheritance in accordance with the following rules:

(1) When there are more than one son, whether by the same or different mothers, they take equal shares.

(2) Sons who were joint with their father at the time of his decease inherit to the exclusion of those who were separate.

(3) Grandsons of a predeceased son inherit in the right of their father, taking per stirpes and not per capita.

(4) "An adopted son of the deceased inherits the whole estate. But where the deceased has left an Auras son surviving him, the adopted son takes one-fourth of the share of an Auras son as provided in Section 57.

(5) The illegitimate son of a twice-born does not inherit to his putative father. But the son of a Shudra inherits to the same extent as a legitimate son, provided that he was born of a continuous concubine, intercourse with whom was neither incestuous nor adulterous.

Provided, further, that where a Shudra father has sons, a legitimate and an illegitimate, the latter takes half the share of a legitimate son, in default of whom he inherits the whole; but he has otherwise no right to collateral succession. He shares equally with the widow and the daughter's son."

300. "Notwithstanding anything herein contained, a son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother.

Provided that a sister's son shall not include a son adopted after the sister's death."

301. (1) "Among the Gotraj Sapindas the nearest Sapinda succeeds, provided that he and the deceased were Sapindas of each other; and provided further that the Sapinda who was joint with the deceased is preferred to the other Sapinda of the same class who was separate.

(2) Save as above, among Sapindas of the same class, those of the whole blood exclude those of the half blood."

Explanation.—"Legitimate sons by different mothers succeed equally to the property of their father."

Exception.—"The rule as to propinquity stated in Clause (1) does not apply to the issue of the owner as defined in Section 107, who inherit by representation."

302. "The order of succession amongst Samanodaks is subject to the following rules:

(1) The nearer line excludes the line more remote; and

(2) A nearer kinsman excludes a remoter kinsman in the same line."

306. "The heirs of a deceased person are the following, who, subject to the other provisions contained in this Part, succeed in the order given below:

(1) Sons. (2) Daughters. (3) Parents. (4) Spiritual Preceptor. (5) Pupil. (6) Fellow Student. (7) The Crown."

307. "The issue of the deceased inherit in accordance with the following rules:

(1) When there are more than one son, whether by the same or different mothers, they take equal shares.

(2) Sons who were joint with their father at the time of his decease inherit to the exclusion of those who were reporate.

(3) Sons who were joint with their father at the time of his death inherit to the exclusion of those who were reporate.

(4) An adopted son of the deceased inherits the whole estate. But where the deceased can left an future son surviving him, the adopted son takes moieties of the share of an actual son as provided in Section [illegible]."

(5) The illegitimate son of a twice-born does not inherit to his putative father. But the son of a Sudra inherits to the same extent as a legitimate son, provided that he was born of a continuous concubine, intercourse with whom was neither incestuous nor adulterous.

Provided, further, that where a Sudra father has sons, a legitimate and an illegitimate, the latter takes half the share of a legitimate son, unless, in default of whom he transfers the whole of his property to right to collateral successors. He shares equally with the widow and the daughter's son."

308. "Notwithstanding anything herein contained, a son's daughter, daughter's daughter, sister and sister's son shall, in the order so specified, be entitled to rank in the order of succession next after a father's father and before a father's brother.

Provided that a sister's son shall not inherit a son adopted after the sister's death."

309. (1) "Among the Bottal Brahmins the nearest Sapinda succeeds. Provided that no one who deceased were Sapindas of each other] and provided further that the Sapinda who was joint with the deceased in preference to the other Sapinda of the same class who was separate.

(2) Save as above, among Sapindas of the same class, those of the whole blood exclude those of the half blood."

Explanation.—"Legitimate sons by different mothers succeed equally to the property of their father."

Exception.—"The rule as to propinquity stated in Clause (1) does not apply to the issue of the owner as defined in Section 107, who inherit by representation."

310. "The order of succession amongst Sannyasins is subject to the following rules:

(1) The nearer line excludes the line more remote and

(2) A nearer element excludes a remoter element in the same line."

303. "The order of succession among Bandhus is subject to the following rules:--

(1) The deceased owner and the Bandhu claiming the heritable right must be Sapindas of each other, either through themselves or through their father and mother.

(2) Of Bandhus of the same class where both are expressly mentioned in the Mitakshara, the order of preference is according to the order in which they are mentioned therein.

(3) Bandhus in a nearer line exclude those of a line more remote, and a nearer Bandhu excludes a remoter Bandhu in the same line.

(4) Bandhus of different classes,—Atma Bandhus, Pitri Bandhus and Matri Bandhus—succeed in their order respectively.

(5) Other conditions being equal, amongst Bandhus of the same degree of descent from a common ancestor, a Bandhu of the whole blood is to be preferred to one of half blood, but this rule is limited in Bombay to the class of brothers and their sons and does not extend to the paternal uncles of the deceased.

(6) Save as provided in Clause (5), among Bandhus of the same class, propinquity to the Propositus is measured by their efficacy in conferring spiritual benefit on him."

Explanation.—"A Bandhuex parte paterna is not to be preferred to a Bandhu ex parte materna when the latter is nearer in degree in the sense that the oblations offered by the former are more efficacious than those offered by the latter."

(7) "As between Bandhus of the same class and degree, a male is to be preferred to a female; and a Bandhu descended through a male is to be preferred to one descended through a female.

This clause applies only to Bombay, Berar and Madras."

Explanation to Clauses (2) and (7).—"Bandhus are said to belong to the same class when they are all Atma Bandhus, Pitri Bandhus or Matri Bandhus. They are of the same degree when they are all equally related to the Propositus either directly to him or through a common ancestor."

304. "In a case where the succession opened before the enactment of the Hindu Inheritance (Amendment) Act, 1929, in Bombay, Berar and Sind, subject to the Mayukh, the wives of Gotraj Sapindas would themselves be treated as such, and take their husband's places in the line of heirs, subject to the two following rules:--

(1) They come in only after all the Gotraj Sapindas in the line, to which their husbands belonged, are exhausted.

(2) A widow of a Gotraj Sapinda cannot inherit until after the sister.

(3) As such the following other females are recognized as heirs:--

(i) Sister, whether of the whole or of half blood.

(ii) Widows of predeceased Sapindas and Samanodaks.

(iii) Son's widow.

(iv) Stepmother.

(v) Father's widow.

(vi) Brother's widow.

(vii) Brother's son's widow.

(viii) Paternal uncle's widow and the widows of the paternal first cousins.

(ix) Daughters of descendents and collaterals within five degrees: --

(a) The son's daughter.

(b) The daughter's daughter.

(c) Brother's daughter.

(d) Sister's daughter.

Who all inherit after the nine Bandhus expressly enumerated in the Mitakshara.

(x) The father's sister, who comes in after all the Gotraj Sapindas but before the Bandhus.

(4) Women inheriting under this rule take an absolute or a limited estate according as they belong to the family by birth or by marriage.

(5) In a case where the succession opens after the enactment of the said Act, the females therein mentioned will inherit as therein provided, and in respect of other females, the rules stated in the foregoing clauses shall apply."

305. (1) "In a case where the succession opened before the enactment of the Hindu Inheritance (Amendment) Act, 1929, in the Madras Presidency the following females are recognized as heritable Bandhus, ranking after all male Bandhus:—

(i) Sister.

(ii) Half sister.

(iii) Son's daughter.

(iv) Daughter's daughter.

(v) Brother's daughter.

(2) In a case where the succession opens after the enactment of the said Act, the females therein mentioned, will inherit as therein provided; and a brother's daughter will inherit as theretofore next after all male Bandhus."

306. "The heir of a hermit (Vanprasth) is a spiritual brother or associate in holiness, of an ascetic (Sanyasi or Yati) a virtuous pupil, and that of a professed student (Brahmachari) his religious preceptor."

"In default of these heirs, anyone associated in holiness may inherit."

[illegible]

[illegible]

[illegible]

## CHAPTER XXV

## THE DAYABHAG SUCCESSION.

307. "In this chapter, unless there is anything repugnant in the subject or context, 'Sapinda' means a Sapinda as defined in Section 293, but no more than three degrees removed, and includes cognate Sapindas within the limit."

308. "'Sakulya' is a male agnate relation of the Propositus in the Dayabhag law, four to six degrees remote from him, or from the common ancestor in the male line of ascent or descent."

309. "All property owned by a person, whether joint or separate, passes by succession on his death."

310. (1) "The following defects, if congenital, disqualify a person from inheritance, namely:

(i) Idiocy.

(ii) Blindness.

(iii) Deafness.

(iv) Dumbness.

(2) And the following defects, if present at the time the succession opened, equally disqualify him from inheritance, namely:

(v) Madness.

(vi) Sanious or ulcerous leprosy.

(vii) Permanent lameness.

(viii) Impotency.

(ix) Other incurable diseases.

(x) When the widow is the heir, her marriage falling under the provisions of Section 2 of the Hindu Widows' Remarriage Act.

(3) Provided that the disqualification in all cases is personal only to the heir disqualified, and does not affect his natural issue, though it affects equally his adopted son and the widow."

311. "The heirs of a deceased owner are in their order the following:

(1) Sapindas.

(2) Sakulyas.

(3) Samanodaks.

(4) Bandhus other than those taking as Sapindas.

(5) The Preceptor.

(6) A Pupil.

(7) A Fellow Student.

## THE DAYANAND SUCCESSION.

XCV. "In this chapter, unless there is anything repugnant in the subject or context, 'Daphida' means a Daphida as defined in Section 250, but no more than three degrees removed, and includes collaterals Daphidas within the limit."

XCVI. "'Samsiyat' is a male agnate relation of the Purpuetwa in the Tayaling Jar, four to six degrees remote from him, or from the common ancestor in the male line of descent or descent."

XCVII. "All property owned by a person, whether joint or separate, passes by succession on his death."

XCVIII. (1) "The following Daphida, if congenital, disqualify a person from inheritance, namely:

(i) Idiocy.

(ii) Illness.

(iii) Deafness.

(iv) Dumbness.

(2) And the following Daphida, if present at the time the succession opens, equally disqualify him from inheritance, namely:

(v) Madness.

(vi) Serious or glorious leprosy.

(vii) Permanent lameness.

(viii) Impotency.

(ix) Other incurable diseases.

(x) When his widow is, the heir, for marriage falling under the provisions of Section 3 of the Hindu Widows' Remarriage Act.

(3) Provided that the disqualification in all cases is personal, only to the heir disqualified, and does not affect his natural issue, though it affects equally his elopted son and the widow."

XCIX. "The heirs of a deceased owner are in their order the following:

(1) Daphidas.

(2) Samsiyas.

(3) Damsandakas.

(4) Persons other than those coming as Daphidas.

(5) The Preceptor.

(6) A Pupil.

(7) A Fellow Student.

(8) The Crown."

312. "The order of succession among Sapindas, Sakulyas and Samanodaks is governed by the following rules:

(1) Except in the cases stated below, those who offer pindas to the deceased are preferred to those who offer them to any of his ancestors.

(2) And those who offer them to the deceased are preferred to those who accept them from the deceased.

(3) A person who offers pindas to a near ancestor is preferred to one offering pindas to an ancestor more remote, irrespective of the number of pindas offered by each of them.

(4) Those who offer oblations to both the paternal and maternal ancestors are preferred to those who offer them only to the paternal ancestors.

(5) Those who are competent to offer pindas to the paternal ancestors of the Propositus are preferred to those who are competent to offer them only to their maternal ancestors, irrespective of the number of pindas offered.

(6) Agnatic Sapindas in ~~any line~~ are always preferred to the cognate Sapindas of the same line.

(7) Between an agnate Sapinda and a cognate Sapinda of equal degree of propinquity, the former is preferred to the latter, even though the latter may offer more pindas in which the deceased would participate.

(8) Subject to the above, those who offer a larger number of pindas of a particular description are preferred to those who offer a less number.

(9) And where the number of such pindas is equal, those that offer to nearer ancestors are preferred to those offering to more distant ones."

Exception to Clause (1).—"Nothing contained in Clause (1) affects the priority of the sons, granisons, great-grandsons and daughter's sons of the Propositus."

## CHAPTER XXVI

## WOMAN'S ESTATE.

313. (1) "In the absence of an express grant, women are presumed to acquire only a limited estate in property howsoever obtained, whether by gift, devise, partition or inheritance.

(2) This rule is subject to the exceptions stated in the next section."

314. "Except as otherwise provided, the rights of a woman in her property acquired by partition or inheritance, are limited as follows:

(1) The estate is liable to be devested upon the subsequent birth or adoption of a son or upon her remarriage, but not for unchastity.

CHAPTER XXXI

MAKER'S ESTATE.

312. (1) "In the absence of an express grant, wears are reserved to [illegible] devise, partition or inheritance."

(2) This rule is subject to the exception stated in the next section."

314. "Except as otherwise provided, the rights of a wearer in [illegible] property acquired by partition or inheritance, are limited as follows:

(1) The estate is liable to be levested upon the occurrence of a [illegible] or upon [illegible] marriage, but not for misconduct."

(2) Where the estate is liable to be levested upon the occurrence of a [illegible] marriage, but not for misconduct, the wearer has power to [illegible] the estate, subject to the levester's right to [illegible] upon the occurrence of the [illegible] marriage.

(3) Where the estate is liable to be levested upon the occurrence of a [illegible] marriage, but not for misconduct, the wearer has power to [illegible] the estate, subject to the levester's right to [illegible] upon the occurrence of the [illegible] marriage.

(4) Where the estate is liable to be levested upon the occurrence of a [illegible] marriage, but not for misconduct, the wearer has power to [illegible] the estate, subject to the levester's right to [illegible] upon the occurrence of the [illegible] marriage.

(5) Where the estate is liable to be levested upon the occurrence of a [illegible] marriage, but not for misconduct, the wearer has power to [illegible] the estate, subject to the levester's right to [illegible] upon the occurrence of the [illegible] marriage.

(6) The Crown."

315. "The order of succession among Sapindas, Samanodakas and Bandhus is governed by the following rules:

(1) Except in the cases stated below, there are offer pindas to the deceased are preferred to those who offer them by reason of his nearness to the person who offers pindas to a more remote ancestor is preferred to those who accept them from the deceased.

(2) And those who offer them to the deceased are preferred to those who offer pindas to a more remote ancestor, irrespective of the number of pindas offered by each of them.

(3) Those who offer oblations to both the paternal and maternal ancestors are preferred to those who offer them only to the paternal ancestors.

(4) Those who are competent to offer pindas to the paternal ancestors of the Preceptus are preferred to those who are competent to offer them only to their maternal ancestors, irrespective of the number of pindas offered.

(5) Sapinda Sapindas by any line are always preferred to the [illegible] Sapindas of the same line.

(6) Between an equate Sapinda and a consate Sapinda of equal degree of proximity, the former is preferred to the latter, even though the latter may offer more pindas to which the deceased would participate.

(7) Between an equate Sapinda and a consate Sapinda of equal degree of proximity, the former is preferred to the latter, even though the latter may offer more pindas to which the deceased would participate.

(8) Subject to the above, those who offer a larger number of pindas of a particular description are preferred to those who offer a less number.

(9) And where the number of such pindas is equal, those who offer it nearer ancestors are preferred to those offering to more distant ones."

Exception to Clause (1).—"Nothing contained in Clause (1) affects the priority of the sons, grandsons, great-grandsons and daughter's sons of the Propositus."

(2) She is not entitled to alienate the corpus except for legal necessity or benefit as hereinafter provided, but she is entitled to appropriate all its income and accumulations which she may dispose of at her discretion.

(3) On her death her estate devolves on the next heir of the last male owner."

Exception 1.—"Under the Mayukh law females who belong to the family of the Propositus by birth take an absolute interest, while those who come into it by marriage take only a limited estate."

Exception 2.—"A Jain widow has absolute power of disposal over the self-acquired property of her husband inherited by her."

Exception 3.—"Nothing in this section applies to an estate acquired by a woman by deed or devise conferring on her an absolute estate."

315. (1) "Under the Mitakshara law, two or more joint female heirs take as joint tenants with the right of survivorship inter se.

(2) But those subject to the Mayukh and Dayabhag laws take as tenants-in-common.

(3) Any alienation by the former must be made either jointly by all or with their express or implied consent.

(4) But an alienation by the latter may be made by any of the coheiresses to the extent of her share."

316. (1) "Any accretion made by an heiress partakes of the nature of the estate to which it is added.

(2) The question whether any property is an accretion to the parent estate is one of intention to augment it by treating it as a part thereof.

(3) But in the absence of anything appearing to the contrary, any purchase made out of income of an estate may be presumed to be an accretion thereto."

317. "A woman has no power (even with the consent of reversioners) to dispose of, by Will, either her limited estate or its accumulations."

318. "Except as otherwise provided by any law for the time being in force, the incidents of a woman's inherited estate are as follows:

(1) She is entitled to absolute possession of the estate which vests in her by right of inheritance.

(2) She is entitled to its beneficial enjoyment.

(3) She may grant leases and do other acts in the ordinary course of management.

(4) She may transfer all or any portion of the estate for her life or until her estate is determined earlier, as for example, by surrender or her remarriage.

(5) Her interest therein may be seized and sold in execution of a decree against her."

319. (1) "A woman may alienate her estate so as to bind the reversioners for legal necessity or for its benefit.

(2) She is not entitled to alienate the estate except for legal necessity or benefit as hereinafter provided, but she is entitled to alienate all its income and accumulations which may, by virtue of her dissertion.

(3) On her death her estate devolves on the next heir of the last male owner."

Exception 1.—"Under the Bhyrab Jaw Female who belongs to the family of the Proceltus by birth take as absolute Interest, while those who come into it by marriage take only a limited estate."

Exception 2.—"A Jain widow has absolute power of disposal over the self-acquired property of her husband inherited by her."

Exception 3.—"Nothing in this section applies to an estate possessed by a woman by devise or gift or by an absolute estate."

316. (1) "Under the Mitakshara law, two or more joint female heirs take as joint tenants with the right of survivorship inter se.

(2) Put these subject to the Bhyrab and Dayabhag laws take as tenants-in-common.

(3) Any alienation by the former must be made either jointly by all or with their express or implied consent.

(4) But an alienation by the latter can be made by only of the two persons to the extent of her share."

316. (1) "Any reservation made by an heiress [illegible] of the nature of the estate to which it is added.

(2) The fraction whether any property in an adversion to the [illegible] estate is one of intention to augment it by treating it as a [illegible] theorem."

(3) But in the absence of anything otherwise to the contrary, any purchase made out of income of an estate may be treated to be an accretion thereto."

317. "A woman has no power (even with the consent of reversioners) to dispose of, by will, either her limited estate or its accruings."

318. (1) "A woman may alienate her estate so as to find the reversioners for legal necessity or for the benefit."

(2) She is not entitled to alienate the estate except for legal necessity or benefit as hereinafter provided, but she is entitled to alienate all the income and accumulations which may, by virtue of her discretion.

(3) On her death her estate devolves on the next heir of the last male owner."

Exception 1.—"Under the Bhyrab Jaw Female who belongs to the family of the Proceltus by birth take as absolute Interest, while those who come into it by marriage take only a limited estate."

Exception 2.—"A Jain widow has absolute power of disposal over the self-acquired property of her husband inherited by her."

Exception 3.—"Nothing in this section applies to an estate possessed by a woman by devise or gift or by an absolute estate."

316. (1) "Under the Mitakshara law, two or more joint female heirs take as joint tenants with the right of survivorship inter se.

(2) Put these subject to the Bhyrab and Dayabhag laws take as tenants-in-common.

(3) Any alienation by the former must be made either jointly by all or with their express or implied consent.

(4) But an alienation by the latter can be made by only of the two persons to the extent of her share."

316. (1) "Any reservation made by an heiress [illegible] of the nature of the estate to which it is added.

(2) The fraction whether any property in an adversion to the [illegible] estate is one of intention to augment it by treating it as a [illegible] theorem."

(3) But in the absence of anything otherwise to the contrary, any purchase made out of income of an estate may be treated to be an accretion thereto."

317. "A woman has no power (even with the consent of reversioners) to dispose of, by will, either her limited estate or its accruings."

318. (1) "A woman may alienate her estate so as to find the reversioners for legal necessity or for the benefit."

(2) In particular, and without prejudice to the generality of the foregoing prevision, such alienation may be made for any of the purposes or objects stated in the next following clauses.

(3) For the performance of shradh and such other religious ceremonies as constitute spiritual necessity of the last full owner.

(4) For the performance of such other pious or religious acts as are conducive to his spiritual benefit; provided that the immovable property alienated for this purpose is in every case reasonable and of moderate extent.

(5) For the payment of the debts of the last full owner even though barred by time.

(6) The payment of Government revenue and all other public charges accruing due in respect thereof and any arrears of rent in default of payment of which the property may be summarily sold.

(7) Cost of obtaining letters of administration or a succession certificate of the property of the last full owner.

(8) Costs of litigation necessary for preserving and defending the estate.

(9) Costs of its preservation and repairs.

(10) Maintenance of herself and those whom the last full owner was bound to maintain.

(11) Marriage of female relations of the last full owner whom he was bound to marry, such as his sister, daughter, son's and grandson's daughter, and the like.

(12) Customary ceremonial gifts to a reasonable extent on the occasion of marriage of such relations.

(13) Customary small gifts on other ceremonial occasions."

Exception.—"Nothing herein applies to a woman continuing the trade or business of her husband, who suffers from no disability of her sex, but is entitled to incur debts and make alienations like man, subject only to the provisions of Section 134 and 140."

320. "Where the Court of Wards or any other guardian is in possession of a woman's estate, its power of alienation is equally subject to the provisions of Section 319."

321. (1) "The heiress may surrender her entire interest to the next reversioner, or to any one or more of such reversioners with the consent of the rest, provided that where the next reversioner is a female, it may be surrendered to the male reversioner next in order with her consent.

(2) Such surrender does not affect the validity of her prior alienations."

Explanation.—"A surrender is not rendered invalid under this section merely because the surrenderer reserves a portion of the estate for her own maintenance or conveys a part thereof to another in compromise of his claim or otherwise, provided the transaction, considered as a whole, is not a device to divide the inheritance."

(3) In particular, and without prejudice to the generality of the foregoing provision, such alienation may be made for any of the purposes or objects stated in the next following clauses.

(4) For the performance of such other plans or such other religious acts as constitute spiritual necessity of the last full owner.

(5) For the performance of such other plans or religious acts as are conducive to his spiritual benefit provided that the incurable sickness extent.

(6) For the payment of the debts of the last full owner even though barred by time.

(7) The payment of Government revenue and all other public charges accruing due in respect thereof and any arrears of rent in default of payment of which the property may be summarily sold.

(8) Costs of obtaining letters of administration or a succession certificate of the property of the last full owner.

(9) Costs of its preservation and repairs.

(10) Maintenance of persons who the last full owner was bound to maintain.

(11) Marriage of female relations of the last full owner when he was bound to marry, such as his sister, daughter, son's and grandson's daughter, and the like.

(12) Customary ceremonial gifts to a reasonable extent on the occasion of marriage of such relations.

(13) Customary small gifts on other ceremonial occasions."

Exception.—"Nothing herein applies to a woman contracting the trade or business of her husband, who suffers from no disability of her sex, but is entitled to incur debts and make alienations like man, subject only to the provisions of Sections 136 and 140."

356. "Where the Court of Wards or any other Guardian is in possession of a woman's estate, its power of alienation is equally ambient to the provisions of Section 329."

351. (1) "The heiress may surrender her entire interest to the next reversioner, or to any one or more of such reversioners with the consent of the rest, provided that where the next reversioner is a female, it may be surrendered to the male reversioner next in order with her consent.

(2) Such surrender does not affect the validity of her prior alienations."

Explanation.—"A surrender is not rendered invalid under this section merely because the surrenderer reserves a portion of the estate for her own maintenance or conveys a part thereof to another in consideration of his claim or otherwise, provided the transaction, considered as a whole, is not a device to elude the inheritance."

322. (1) "An alienation of property for value, or purporting to be made for legal necessity, made by the heiress with the consent of the next male reversioner, will be presumed to be valid and supported by legal necessity.

(2) But where the alienation relates to her entire interest in the estate, and is consented to by all her next reversioners, it will be conclusive against the actual reversioners when the succession opens."

Explanation 1.—"Such consent may be express or implied, and may be given contemporaneously with or subsequently to the transaction."

Explanation 2.—"No consent is valid—

(a) if it is given without full knowledge of the nature and effect of the transaction;

(b) if it is given or obtained collusively or fraudulently with intent to defeat the claims of a future reversioner; or

(c) if it is not given in good faith with intent to confirm the transaction."

323. "When an alienation made by an heiress is found to be partially supported by legal necessity or benefit and binding on the reversioner, it may be set aside or upheld in accordance with the rules laid down in Section 131, or otherwise as hereinbefore provided."

## CHAPTER XXVII

## REVERSIONERS AND THEIR RIGHTS.

324. (1) "So long as the estate is vested in the heiress, the interest of her reversioners to succeed to it is a mere spes successionis and is incapable of being the subject of any contract, surrender or disposal.

(2) One reversioner does not derive his title from another but all derive their title equally from the last full owner."

325. "A reversioner cannot maintain a suit merely to obtain a declaration of his reversionary rights."

326. (1) "Subject to the provisions of the next section, the reversioner is entitled to restrain the heiress or her alienee from committing waste or any other act endangering the reversion.

(2) And he may restrain her by an injunction from making an improper alienation and obtain a declaration that any alienation made by her would be voidable by him on her death.

(3) He may obtain a declaration that an alleged adoption prejudicing his reversion is invalid or never in fact took place.

(4) He may oppose the grant of probate to the limited owner if prejudicial to the reversion."

327. (1) "A suit to obtain any of the foregoing reliefs must be brought in the first instance by the presumptive reversioner, but if owing to his minority, collusion, consent, ratification, waiver of his right as reversioner, estoppel or limitation, he is unable or unwilling without sufficient cause to sue, then it may be brought by the reversioner next to him in succession but in that case the Court may join the presumptive reversioner as a party to the suit.

reversioner as a party to the suit.

it in succession *but* in that case the Court may join the presumptive reversioner as a party to the suit.

357. (1) "A suit to obtain any of the foregoing reliefs must be brought in the first instance by the presumptive reversioner, *but* if owing to his minority, collusion, consent, ratification, waiver of his right as reversioner, estoppel or limitation, he is unable or unwilling without prejudice to the reversion.

(4) He may oppose the grant of probate to the limited owner if

(3) He may obtain a declaration that an alleged adoption prejudicing his title reversion is invalid or never in fact took place.

proper alienation and obtain a declaration that any alienation made by her would be voidable by him on her death.

(2) And he may restrain her by an injunction from making an improper alienation or from committing waste or any other act endangering the reversion.

is entitled to restrain the heiress or her alience from committing waste

356. (1) "Subject to the provisions of the next section, the reversioner tion of his reversionary rights."

355. "A reversioner cannot maintain a suit merely to obtain a declaration of his title as against a person who is in adverse possession but will derive their title equally from the last full owner."

(2) One reversioner does not derive his title from another but all

impossible of being the subject of any contract, whatever or however improbable of being executed, to it is a gate upon successions and in other reversioners to succeed to it is a gate upon successions and in

354. (1) "So long as the estate is vested in the heiress, the interest

## CHAPTER XXVII

## REVERSIONERS AND THEIR RIGHTS.

Section 131, or otherwise as hereinbefore provided."

supported by legal necessity or benefit and binding on the reversioner, it may be set aside or upheld in accordance with the rule laid down in

353. "When an alienation made by an heiress is found to be partially

the transaction."

(c) If it is not given in good faith with intent to confirm

intent to defeat the claims of a future reversioner or

(b) If it is given or obtained collusively or fraudulently with

effect of the transaction

(a) If it is given without full knowledge of the nature and

Explanation 2.—"No consent is valid—

given contemporaneously with or subsequently to the transaction."

Explanation 1.—"Such consent may be express or implied, and may be

ulative against the actual reversioners when the succession opens."

estate, and is communicated to by all her next reversioners, it will be con-

(2) But where the alienation relates to her entire interest in the

reversioner, will be presumed to be valid and supported by legal necessity.

355. (1) "An alienation of property for value, or purporting to be made for legal necessity, made by the heiress with the consent of the next male

(2) A suit instituted by the presumptive reversioner may on his death, or otherwise on proof of latches or collusion with the heiress whose acts are impugned, be continued by the next presumable reversioner.

(3) Where the immediate reversioner is a female, the nearest male reversioner may maintain such suit without having to show any of the causes mentioned in Clause (1).

(4) Any adjudication made in such suit is res judicata as against the heir when the reversion opens."

328. (1) "In a suit between the reversioner and the heiress's alienee for possession of property comprised in her estate, it lies on the latter to prove that the former is bound by the transfer to him as supported by legal necessity.

(2) In a suit between ahpardannshin heiress and her transferee, it lies on the transferee to prove not only that the deed was executed by, but was explained to and really understood by the former, who had executed it by the free and independent exercise of her will."

329. "A suit to avoid an alienation may be brought by the presumptive reversioner within twelve years and by a presumable reversioner within six years from the date thereof."

330. "An alienation by the heiress in excess of her powers is not void, but voidable at the election of the reversioner."

331. (1) "On the death of the heiress her limited estate devolves on her next reversioner then alive.

(2) Reversioners take per capita.

(3) Where the next reversioner disclaims the estate, it devolves on the reversioner next to him in succession."

Explanation.—"The term 'death' in Clause (1) includes civil death as by remarriage or abandonment of worldly affairs which determines the estate."

332. "On the estate vesting in the reversioner he acquires the following rights:

(1) He is entitled to possession of the estate together with all its accumulations, accretions and incidents as on the death of the heiress.

(2) He is entitled to dispute all unauthorized acts of the female heir.

(3) He is entitled to represent the estate, and as such, may continue the suit instituted by or against the heiress.

(4) He may execute all decrees obtained by her as representing the estate, as he is liable to satisfy all such decrees obtained against her."

333. "On succession, the reversioner becomes subject to the following liabilities:

(1) He is bound by all alienations made by the heiress supported by legal necessity or benefit of the estate.

(2) He is liable to pay for the reasonable expenses of her Shradh in proportion to the estate which he has inherited.

(3) A suit instituted by the presumptive reversioner may on his death, or otherwise on proof of laches or collusion with the heiress whose suits are barred, be continued by the next presumptive reversioner.

(3) Where the immediate reversioner is a female, the nearest male reversioner may maintain such suit without having to show any of the causes mentioned in Clause (2).

(4) Any adjudication made in such suit is res judicata as against the heir upon the reversion expectant."

238. (1) "In a suit between the reversioner and the heiress's alienee for possession of property comprised in her estate, it lies on the latter to prove that the former is bound by the transfer to him as supported by legal necessity.

(2) In a suit between chargeable heiress and her transferee, it lies on the transferee to prove not only that the debt was executed but was explained to and really understood by the former, who had executed it by the free and independent exercise of her will."

239. "A suit to avoid an alienation may be brought by the presumptive reversioner within twelve years and by a presumptive reversioner within six years from the date thereof."

240. "An alienation by the heiress in excess of her powers is not void, but voidable at the election of the reversioner."

241. (1) "On the death of the heiress her limited estate devolves on her next reversioner then alive.

.....

(2) Where the next reversioner inclaims the estate, it devolves on the reversioner next to him in succession."

.....

Explanation.—"The term 'death' in Clause (1) includes civil death or by renunciation or abandonment of worldly affairs which determines the estate."

242. "On the estate vesting in the reversioner he acquires the following rights:

(1) He is entitled to possession of the estate together with all its accumulations, accretions and incidents as on the death of the heiress.

(2) He is entitled to dispute all unauthorised acts of the female heir.

(3) He is entitled to represent the estate, and as such, may commence the suit instituted by or against the heiress.

(4) He may execute all decrees obtained by her as representing the estate, he is liable to satisfy all such decrees obtained against her."

243. "On succession, the reversioner becomes subject to the following liabilities:

(1) He is bound by all alienations made by the heiress supported by legal necessity or benefit of the estate.

(2) He is liable to pay for the reasonable expenses of her Shradh in proportion to the estate which he has inherited.

(3) He is liable to pay all her debts and for her wrongs, to the extent provided in the next two following sections."

334. "Reversioners are not bound to pay the debts of the heiress other than her trade debts incurred in respect of a family business or those not supported by legal necessity or benefit."

335. "The reversioner is bound to pay for the torticus acts of the heiress committed for the benefit of the estate."

336. "The reversioners are bound by a decree passed against the heiress personally as representing the estate, unless it is shown that it was a decree obtained by collusion or fraud, or that there had not been a fair trial of the rights in the suit."

Explanation 1.—"The decree in this section includes all proceedings consequent upon such decree including a sale in execution thereof."

Explanation 2.—"A decree passed against the heiress on a matter personal to her is not a decree passed against her as representing the estate."

Explanation 3.—"A decree otherwise valid is not rendered invalid merely by reason of the fact that it had been obtained by consent or compromise."

337. (1) "The reversioner is entitled to sue for possession of immoveable property, to which he becomes entitled on the death of a female limited owner, at any time within twelve years from her death, as provided in Art. 141 of the Limitation Act; or in case of its forfeiture, within the same period calculated from when the forfeiture is incurred, as provided in Art. 143 of the Limitation Act.

(2) Where, however, the property to be recovered is moveable, he must sue within six years from the same event, under Art. 120 of the Limitation Act.

(3) Provided that where the heiress had at any time set up an adverse title against the reversioner, his claim will be barred by her adverse possession for twelve years."

## CHAPTER XXVIII

## STRIDHAN.

338. (1) "'Stridhan', unless otherwise expressed or necessarily implied, means the woman's property acquired by her otherwise than by inheritance or partition, over which she possesses full power of disposal, and which, on her death, devolves upon her own heirs. —

(2) It includes property into which it is converted by sale, exchange or otherwise."

339. "The following property constitutes a woman's stridhan:

(1) Property inherited by female heirs born in the family and subject to Mayukh.

(2) Income and its savings from property inherited by female heirs elsewhere, not being an accretion thereto.

(3) He is liable to pay all her debts and for her wrongs to the extent provided in the next two following sections."

324. "Reversioners are not bound to pay the debts of the heiress other than her trade debts incurred in respect of a family business or those not supported by legal necessity or benefit."

325. "The reversioner is bound to pay for the tortious acts of the heiress committed for the benefit of the estate."

326. "The reversioners are bound by a decree passed against the heiress personally or representing the estate, unless it is shown that ~~there has not been a~~ decree obtained by collusion or fraud, or that there has not been a fair trial of the rights in the suit."

Explanation 1.--"The decree in this section includes all proceedings ~~occasioned~~ upon such decree including a sale in execution thereof."

Explanation 2.--"A decree passed against the heiress on a matter personal to her is not a decree passed against her as representing the estate."

Explanation 3.--"A decree otherwise valid is not rendered invalid merely by reason of the fact that it had been obtained by ~~collusion~~ or concurrence."

327. (1) "The reversioner is entitled to sue for possession of immovable property, ~~to which he becomes entitled on the death of a female limited~~ ~~owner~~, at any time within twelve years ~~from such death~~, as provided in Article 141 of the Limitation Act; or in case of his forfeiture, within the same period calculated from when the forfeiture is incurred, as provided in Art. 142 of the Limitation Act.

(2) Where, however, the property to be recovered is movable, he must sue within six years from the same event, under Art. 120 of the Limitation Act.

(3) Provided that where the heiress has at any time set up an adverse title against the reversioner, his claim will be barred by her adverse possession for twelve years."

## CHAPTER XXXIII

### STRIDHAN.

328. (1) "Stridhan", unless otherwise expressed or necessarily implied, means the woman's property acquired by her otherwise than by inheritance or partition, over which she possesses full power of disposal, and which on her death, devolves where her own heirs.

(2) It includes property into which it is converted by sale, exchange or otherwise."

329. "The following properly constitutes a woman's stridhan:

(1) Property inherited by female heirs other than ~~heirs~~ limited and subject to Mayukh.

(2) Income and its savings from property inherited by female heirs elsewhere, not ~~being~~ on partition therein.

(3) Property acquired by grant, gift, or devise from a relation or a stranger which confers an absolute power of disposal.

(4) Property given for the purpose, or in lieu of maintenance, not being property allotted on partition to a wife or widow.

(5) Accretions to and purchases made out of such property.

(6) Property acquired by adverse possession.

(7) Property acquired by self-exertion.

(8) Wedding gifts, and more particularly the following:

(i) Yautuk including—

(a) Adhyagnik Stridhan—gifts made before the nuptial fire, i.e., at the actual marriage ceremony; and

(b) Adhyavahnik Stridhan—gifts received at the time of the marriage procession.

(ii) Sulk—or gratuity.

(9) Adhivednik—or the compensation given by the husband to his wife on his marrying another wife.

(10) Anvadheyak—or gifts made after marriage by her relations or by her husband's relations."

340. (1) "Notwithstanding anything hereinbefore contained, Stridhan in the provinces subject to the Mayukh means and includes property acquired by a woman in partition or by inheritance otherwise than from her husband.

(2) For the purpose of succession, the Mayukh subdivides Stridhan into (a) technical, or proper and (b) non-technical, or improper.

(3) Technical or proper Stridhan means and includes—

(a) a woman's marriage presents; and

(b) gifts and bequests made to her by the blood relations.

(4) Non-techincal or improper Stridhan means and includes—

(a) property inherited by her from a male;

(b) or received from a stranger;

(c) her own earnings; and

(d) her maintenance grant.

(5) Succession to Stridhan, technical and non-technical, follows the special rules laid down in the Mayukh, and hereafter sell out in Section 347."

341. "A woman cannot alien or devise her Stridhan other than Saudayik during coverture without her husband's consent."

342. "Save as provided in the last section, the owner of Stridhan possesses the power to dispose of it by an act inter vivos or by Will."

possessor the power to dispose of it by an act later alive or by will."

345. "Save as provided in the last section, the owner of Stridhan

during coverture without her husband's consent."

341. "A woman cannot alive or leave her Stridhan other than Dowry

tion 304."

(6) Succession to Stridhan, husband and non-husband, follows the special rules laid down in the Dayabh. and hereafter call out in Sec-

(4) her maintenance grant.

(3) her own earnings and

(2) or received from a stranger

(1) property inherited by her from a male

(4) Non-technical or improper Stridhan means and includes—

(3) Gifts and bequests made to her by the block relations.

(2) property acquired by grant, gift, or devise from a relation or a stranger which confers no absolute power of disposal.

(1) Property acquired by self-exertion.

(6) Nothing else, and more particularly the following:

(5) Property acquired in marriage consequent on her relations or by her husband's relations.

(4) Property given for the purpose, or in lieu of maintenance, not being property allotted on partition to a wife or wife.

(3) Accretions to any purchases made out of such property.

(2) Property acquired in virtue possession.

(1) Immovable property—

(a) Adhyavahanik Stridhan—gifts made before the nuptial fire, i.e., at the actual marriage ceremonial and

(b) Adhyavahanik Stridhan—gifts received at the time of the marriage procession.

(11) Sole—or proximity.

(9) Adhivedanik—or the consideration given by the husband to his wife on his marrying another wife.

(10) Saudayika—or gifts made after marriage by her relations or by her husband's relations.

(1) "Non-testamentary Stridhan hereinbefore contained." Stridhan in the previous subject to the Mayukh means and includes property acquired by a woman in partition or by inheritance otherwise than from her husband.

(2) For the purpose of succession, the Mayukh subdivides Stridhan into (a) technical or proper and (b) non-technical or improper.

(3) Technical or proper Stridhan means and includes—

(a) a woman's separate property and

(b) gifts and bequests made to her by the block relations.

(4) Non-technical or improper Stridhan means and includes—

(a) property inherited by her from a male

(b) or received from a stranger

(c) her own earnings and

(d) her maintenance grant.

(5) Succession to Stridhan, technical and non-technical, follows the special rules laid down in the Mayukh and hereafter call out in Section 304.

341. "A woman cannot alive or leave her Stridhan other than Dowry during coverture without her husband's consent."

345. "Save as provided in the last section, the owner of Stridhan possessor the power to dispose of it by an act later alive or by will."

343. "On the death of a maiden, her Stridhan is inherited by her heirs in the following order:

(1) Uterine brothers.

(2) Mother.

(3) Father.

(4) The father's sapindas.

(5) The mother's sapindas.

(6) Her own sapindas."

344. (1) "Except as otherwise hereinafter provided, the Stridhan of a woman married in the Brahm form with children devolves on her following relations:

(i) Unmarried daughters.

(ii) Married daughter who is poor or childless.

(iii) Married daughter who is well-to-do whether she has children or not.

(iv) Daughter's daughter.

(v) Daughter's son.

(vi) Son.

(vii) Son's son.

(viii) Husband.

(ix) His nearest sapindas.

(x) Her own blood relations.

(2) The heirs of a woman married in the Asur or some other unapproved form of marriage are her:

(i) Mother.

(ii) Father.

(iii) Father's sapindas."

345. (1) "The Stridhan of an issueless woman devolves on her husband if she was married to him in the Brahm form which will be presumed, and failing him on his nearest sapindas in the order of their succession to him, and failing them on her own blood relations.

(2) But if she was married to him in the Asur form (or some other unapproved form) it devolves in her mother, then on her father, and then on the father's or mother's nearest Sapinda in the order of their succession to them."

346. (1) "Both under the Mitakshara and the Dayabhag system Sulk goes first to the uterine brothers, then to the mother, then to the father, and in default of them, it goes to the heirs of the other Stridhan.

(2) Provided that in the Dayabhag country the heir ranking next after the father is the husband."

(5) Her own relatives.

(6) The mother's relatives.

(7) The father's relatives.

(8) Mother.

(9) Father.

(10) Uterine brothers.

(11) Uterine brothers and sisters.

(12) Her own children.

(13) Husband.

(14) Daughter's children.

(15) Daughter's daughter.

(16) Son's children.

(17) Son's son.

(18) Husband.

(19) His nearest relatives.

(20) Her own blood relations.

(21) The heirs of a young married in the home or young other unmarried
form of marriage are heir

(1) Mother.

(2) Father.

(3) Father's relatives.

346. (1) "The Brahman of an inferior person by marriage on her husband is
ipso facto ejected from the family to which she belongs by birth and
has no claim on the property of her husband's family.

(2) But if she was married to him in the same form (or some other
approved form) it devolves in her mother, and then
on the father's or mother's nearest Sapinda in the order of their succes-
sion to them."

365. (1) "Both water the Nishadhas and the Jugulang system Bulk once
first to the virgin daughter, then to the mother, then to the father,
and in default of them, it goes to the heirs of the other Brahmin.

(2) Provided that in the Jugulang country the heir usually must
offer the father in the husband."

347. "In the Mayukh and the Dravid countries the following classes of Stridhan follow a special line of devolution:

(1) Yautak Stridhan goes to the maiden daughters in the first instance.

(2) Anvadheyak, Adhivednik and Pitri-Dutt Stridhans are shared equally by (i) the sons and unmarried daughters, and (ii) the sons and married daughters, and failing them, they are inherited by the daughter's children and son's son.

Provided that in the case of Stridhan mentioned in the last clause widowed daughters are excluded and the widows of Gotraj Sapindas do not inherit any Stridhan."

## Special Rules of Dayabhag Succession.

(Ss. 348-352.)

348. "The heirs to the Sulk, Ayautak, Anvadheyak and gifts received during maidenhood of an issueless woman, subject to the Dayabhag law, are, in the first instance, her—

(1) brothers of the whole blood,

(2) mother,

(3) father,

(4) husband,

and it then follows the line of succession applicable to other Stridhan."

349. "The Stridhan of women subject to the Dayabhag law, other than Sulk, Ayautak and Pitri-Dutt and other special classes of Stridhan, herein otherwise provided for, devolves on the following heirs:

(1) The son and unbretrothed daughter.

(2) Married daughter having or who is likely to have a son.

(3) Son's son.

(4) Daughter's son.

(5) Son's son's son.

(6) The son of a rival wife.

(7) Her son's son.

(8) A barren daughter or sonless widowed daughter.

(9) The parents.

(10) Brother.

(11) The husband.

347. "In the Nyerh and the Dyrid countries the following clauses of Stridhan follow a special line of devolution:

(1) Yautuk Stridhan goes to the maiden daughters in the first instance.

(2) Jawadayak, Adhivedanik and Pitri-Dutt Stridhan are shared equally by (1) the sons and unmarried daughters, and (11) the sons and children and sons's sons, and failing them, they are inherited by the daughters married daughters, and failing them, they are inherited by the husband.

Provided that in the case of Stridhan mentioned in the last clause widowed daughters are excluded and the widows of Sapinda do not inherit any Stridhan."

Special Rules of Devolving Succession.

(Ss. 348-352.)

348. "The heirs to the Gulk, Ayautuk, Anvadayak and gifts received during maidenhood or as learless women, subject to the Devolving law, are, in the first instance, her-

(1) brothers of the whole blood,

(2) mother,

(3) father,

(4) husband,

and it then follows the line of succession applicable to other Stridhan."

349. "The Stridhan of women subject to the Devolving law, other than Gulk, Ayautuk and Pitri-Dutt and other special classes of Stridhan, herein otherwise provided for, devolves on the following heirs:

(1) The son and unmarried daughter.

(2) Married daughter having or who is likely to have a son.

(3) Son's son.

(4) Daughter's son.

(5) Son's son's son.

(6) The son of a rival wife.

(7) Her son's son.

(8) A barren daughter or widows widowed daughter.

(9) The parents.

(10) Brother.

(11) The husband.

350. "Except the Sulk and Anvadheyak Stridhans, the heirs to the Stridhan of a childless woman are:

(a) If married in Brahm form—

(1) Husband.

(2) Brother.

(3) Mother.

(4) Father.

(b) If married in Asur form:

(1) Mother.

(2) Father.

(3) Brother.

(4) Husband.

(c) After whom in whatever form married her heirs are:

(5) Husband's younger brother.

(6) Son of husband's elder or younger brother.

(7) Sister's son, including stepsister's son.

(8) Husband's sister's son.

(9) Brother's son.

(10) Daughter's husband.

(11) Father-in-law.

(12) Husband's elder brother.

(13) Her father-in-law's great-grandson in the male line.

(14) The paternal grandfather of her husband or his issue.

(15) The paternal great-grandfather of her husband or the issue of the husband in order of propinquity.

(16) The Sakulyas.

(17) The Samanodaks.

(18) Samanpravars.

(19) The Crown."

351. "The heirs to Stridhan given by the father are in the first instance:

(1) The full brother.

(2) The mother.

(3) The father.

(3) The father.

(2) The mother.

(1) The full brother.

stance:

331. "The heirs to Stridhan given by the father are in the first in-

(16) The Crown.

(15) Sharerpravara.

(14) The Senamukhya.

(13) The paternal great-grandfather of her husband or the same of the husband in order of propinquity.

(12) The paternal grandfather of her husband or his issue.

(11) Her father-in-law's great-grandson in the male line.

(10) Husband's elder brother.

(9) Father-in-law.

(8) Daughter's husband.

(7) Sister's son, including stepsister's son.

(6) Son of husband's elder or younger brother.

(5) Husband's younger brother.

(4) Husband.

(3) Brother.

(2) Father.

(1) Mother.

(f) If married in Asur form:

(4) Father.

(3) Mother.

(2) Brother.

(1) Husband.

(e) If married in Brahm form—

of a childless woman are:

330. "Except the Dvik and Anvadheyak Stridhans, the heirs to the Stridhan

(4) The husband."

352. (1) "The Yautak is in the first instance taken by:

(1) Unbetrothed daughters.

(2) Betrothed daughters.

(3) Married daughters who have or are likely to have a son.

(4) Barren and sonless widowed daughters.

(5) The son.

(6) Daughter's son.

(7) The son's son.

(8) The son's son's son.

(9) The son of a rival wife.

(10) Grandson of a rival wife.

(11) Great-grandson of a rival wife.

(2) In default of the above-mentioned heirs, her heirs are her:

(12) Husband.

(13) Brother.

(14) Mother.

(15) Father.

If she was married in an approved form.

But if she was married in an unapproved form, then the order of her heirs is as follows:

(12) Mother.

(13) Father.

(14) Brother.

(15) Husband.

(16) Husband's younger brother.

(17) Husband's brother's son.

(18) Sister's son.

(19) Husband's sister's son.

(20) Brother's son.

(21) Daughter's husband.

(22) Husband's heirs."

(4) The husband."

385. (1) "The Yautak is in the first instance taken by:

(1) Unlettered daughters.

(2) Betrothed daughters.

(3) Married daughters who have or are likely to have a son.

(4) Barren and sonless widowed daughters.

(5) The son.

(6) Daughter's son.

(7) The son's son.

(8) The son's son's son.

(9) The son of a rival wife.

(10) Grandson of a rival wife.

(11) Great-grandson of a rival wife.

(2) In default of the above-mentioned heirs, her heirs are her

(12) Husband.

(13) Mother.

(14) Father.

(15) Brother.

(16) Husband's younger brother.

(17) Husband's brother's son.

(18) Sister's son.

(19) Husband's sister's son.

(20) Brother's son.

(21) Daughter's husband.

(22) Husband's heirs."

her heirs are as follows:

But if she was married in an unapproved form, then the order of

(12) Mother.

(13) Father.

(14) Brother.

(15) Husband.

(16) Husband's younger brother.

(17) Husband's brother's son.

(18) Sister's son.

(19) Husband's sister's son.

(20) Brother's son.

(21) Daughter's husband.

(22) Husband's heirs."

If she was married in an approved form,

353. (1) "Persons disqualified from ordinary inheritance by reason of their disabilities mentioned in Section 285 to 289 (both inclusive) are equally disqualified to inherit Stridhan.

(2) But unchastity does not disqualify a woman from inheriting it."

354. (1) "Illegitimacy is no bar to succession to Stridhan, the heirs of which rank in the following order:

(a) Legitimate daughter.

(b) Legitimate son.

(c) Illegitimate daughter.

(d) Illegitimate son.

(e) Other blood relations of the Propositа, in their order of propinquity.

(2) Provided that where the tie of marriage is not legally severed on the wife's immorality, her husband and his Sapindas take in preference to her own blood relations.

(3) On failure of the issue, legitimate or illegitimate, a child validly adopted by a woman inherits her Stridhan in preference to her other heirs."

355. (1) "Save as otherwise herein provided, Stridhan inherited by a female heir does not become her own Stridhan, since a female can inherit only a woman's limited estate therein, which on her death reverts to the heirs of her last predecessor-in-title.

(2) Provided that in the country subject to Mayukh, females belonging to the family of the Propositа, whether by birth or by marriage, take by inheritance an absolute interest in the Stridhan, which they possess as such, and which, on their death devolves upon their Stridhan heirs."

356. "The heirs to a Stridhan take in severalty without benefit of survivorship, even if they be members of a joint family."

## CHAPTER XXIX.

### SUPPLEMENTARY PROVISIONS.

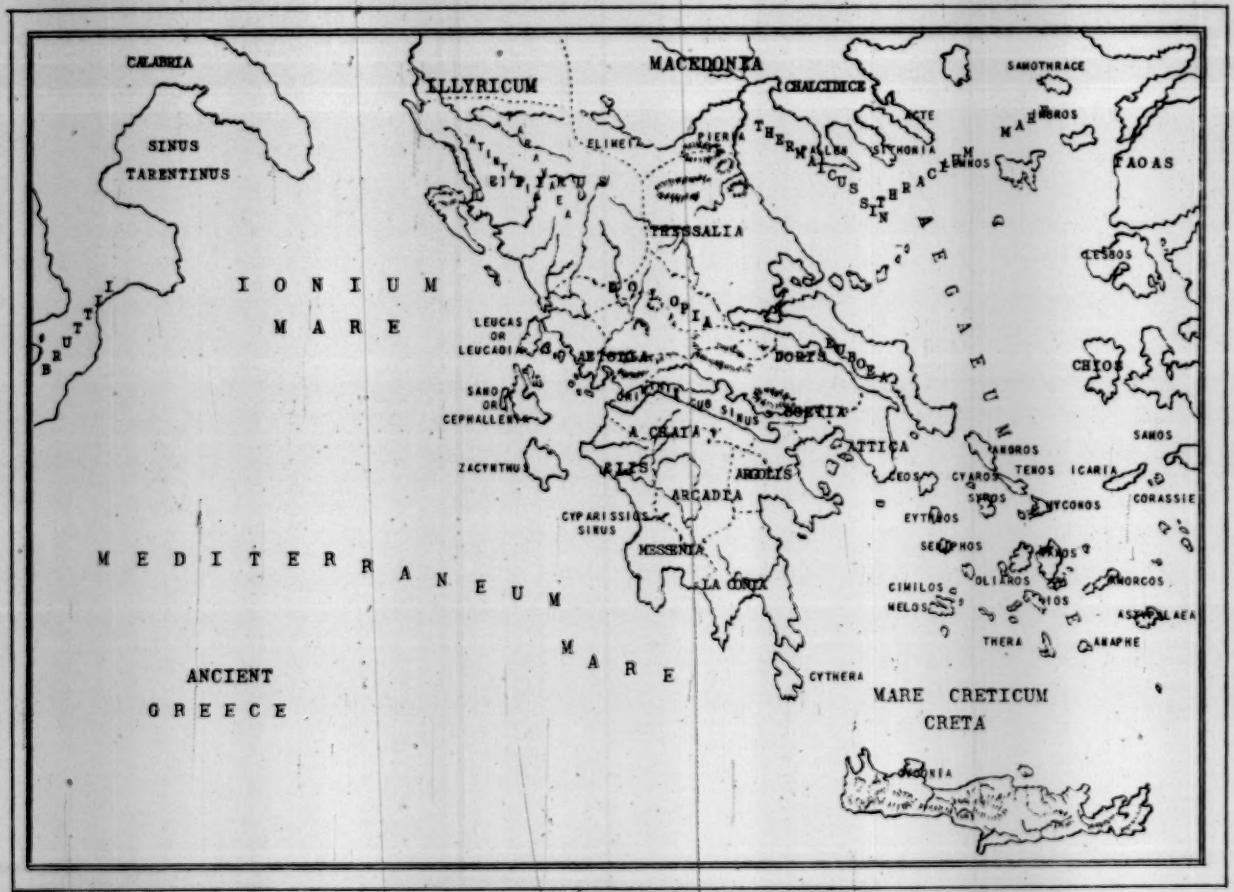
357. (1) "Questions should not be decided solely on the texts of the Shastras but must be made conformable to reason.

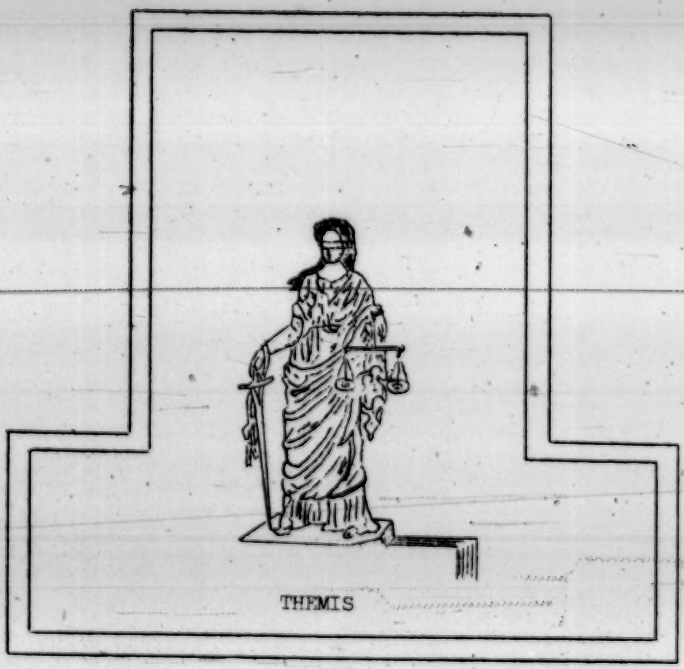
(2) Where, upon any matter, the authority of the Shastras is conflicting, it should be decided in conformity with the rules of equity."

358. "In cases not provided for by this Code, or by any law for the time being in force, the Courts shall act according to justice, equity and good conscience."

# PART V

# G R E E K


CALABRIA
SINUS TARENTINUS
ILLYRICUM
MACEDONIA
CHALCIDICE
SAMOTHRACE
ACTE
MARONEA
THERMAICUS SINUS
SITHONIA
THRACIA
THASOS
PAOAS
ELIMEA
PIERIA
THESSALIA
AETOLIA
BOEOTIA
DORIS
PHOCIS
LOCRIS
OPUNTIUS SINUS
LEUCAS OR LEUCADIA
SAMOS OR CEPHALLENIA
ZACYNTHUS
ACHAIA
ELIS
ARGOLIS
ARCADIA
ATTICA
CEOS
CYTHNOS
SERIPHOS
SIPHNOS
IOS
CIMILOS
MELOS
OLIARUS
AMORGOS
ASTYPALAEA
THERA
ANAPHE
CYTHERA
CYPARISSIUS SINUS
MESSENIA
LACONIA
MARE CRETICUM
CRETA
CYDONIA
LESBOS
CHIOS
SAMOS
ICARIA
TENOS
MYCONOS
CORASSIE
EUBOEA
IONIUM MARE
MEDITERRANEUM MARE
ANCIENT GREECE



THEMIS

# THE TWELVE TABLES

## OF GORTYN

The order of matters is as follows:--

Sec. 1. Claims to freedom or to possession of a slave.

Sec. 2. Rape, adultery, and the like.

Sec. 3. A woman's right to property after divorce or husband's death.

Sec. 4. Disposal of child born after divorce, or child of unmarried slave.

Sec. 5. Division of parents' property after death.

Sec. 6. Separate property of children and mother.

Sec. 7. Rights of redeemer in the redeemed captive.

Sec. 8. Status of child of free and slave parents.

Sec. 9. Responsibility for wrongful acts of a purchased slave.

Sec. 10. Marriage and property of heiress.

Sec. 11. Procedure in certain cases of suretyship and other obligations.

Sec. 12. Limitation of gifts in prejudice of those having claims.

Sec. 13. Prohibition to sell or pledge a pledged or disputed slave.

Sec. 14. Adoption.

Sections 15-20. Supplementary provisions, viz.:--

Sec. 15. Supplementary to section 1.

Sec. 16. Duty of judge.

Sec. 17. Supplementary to section 11.

Sec. 18. " " section 3.

Sec. 19. " " sections 3 and 12.

Sec. 20. " " section 10.

The order of matters is as follows:--

Sec. 1. Claims to freedom or to redemption of a slave.

Sec. 2. Rape, adultery, and the like.

Sec. 3. A woman's right to property after divorce or husband's death.

Sec. 4. Disposal of child born after divorce, or child of unmarried slave.

Sec. 5. Division of parents' property after death.

Sec. 6. Separate property of children and mother.

Sec. 7. Rights of redeemed in the redeemed captive.

Sec. 8. Status of child of free and slave parents.

Sec. 9. Responsibility for wrongful acts of a purchased slave.

Sec. 10. Marriage and property of helpers.

Sec. 11. Procedure in certain cases of survivship and other obligations.

Sec. 12. Limitation of suits in prejudice of these declarations.

Sec. 13. Prohibition to sell or pledge a pledged or dedicated slave.

Sec. 14. Adoption.

Sections 15-20. Supplementary provisions, viz.:--

Sec. 15. Supplementary to section 1.

Sec. 16. Duty of judge.

Sec. 17. Supplementary to section 11.

Sec. 18. " " section 3.

Sec. 19. " " sections 3 and 15.

Sec. 20. " " section 10.

I.

"Whoever is going to contend about a freeman or slave shall not lead him away before trial. And if he lead him away (the judge) shall adjudge (a fine of) ten staters in case of a freeman, five in case of a slave for leading him away, and shall judge that he let him go within three days. And if he shall not let him go, he shall adjudge (a fine of) a stater in case of a freeman, a drachm in case of a slave for each day until he let him go, and with respect to the time the judge shall decide on oath.

And if he should deny leading him away, the judge shall decide on oath, unless a witness shall declare.

And if the one contend that he is free and the other that he is a slave, the stronger shall be they who declare him to be free. And if they contend about a slave, saying each that it is his (slave), if a witness declare it, the judge shall decide according to the witness, but if they either declare for both or for neither, the judge shall decide on oath.

And if the possessor lose his suit, he shall let a freeman go within five days, but a salve he shall give back into hands (of his opponent). And if he let him not go or give him not back, (the judge) shall adjudge him to win in case of a freeman fifty staters, and a stater for each day until he let him go, and in case of a slave ten staters and a drachm for each day until he give him back into hands. And if the judge shall adjudge (a fine), there shall be exacted within a year threefold or less, not more, and with respect to the time the judge shall decide on oath.

And if the slave, in whosesoever case he has lost his suit, take sanctuary, (the defendant) summoning him in the presence of two witnesses, runners, freemen shall point out (the fact) at the temple where ever he be in sanctuary, either (the defendant) himself or another on his behalf; and if he summon not and point not out, he shall restore what has been written.

And if he even give him not back in the year, he shall besides restore the single values, and if he die, while the suit is in contention, he shall restore the single value.

And if (one when) Ruling lead away (a slave), or another lead away (a slave) or one Ruling, if he leave office, he shall contend, and if he lose his suit he shall restore . . . . what has been written.

To one that leads away (a slave) won in a suit . . . (or) pledged, there shall be no damage."

2.

If one lie by force with a freeman or freewoman, he shall restore a hundred staters, but if with (the man or woman) of a clubless person, ten staters. If a slave (force) a freeman or freewoman, he shall restore twofold, and if a freeman (force) a male or female householder, five drachms; and if a male householder (force) a male or female householder, five staters.

"Whoever is going to contend about a freeman or slave shall act [illegible] his duty before trial. And if he [illegible] duty (the judge) shall [illegible] (a fine of) ten staters in case of a freeman, five in case of a slave for leaving him away, and shall judge that he let him go within three days. And if he shall not let him go, he shall pay (a fine of) a stater in case of a freeman, a drachm in case of a slave for each day until he let him go, and will respect to the time the judge shall decide on each.

And if he should deny leading him away, the judge shall decide on oath, unless a witness shall declare.

And if the one contend that he is free and the other that he is a slave, the attorney shall be they who declare him to be free. And if they contend about a slave, saying each that it is his (slave), if a witness declare it, the judge shall decide according to the witness, but if they either declare [illegible] for neither, the judge shall decide on oath.

And if the possessor lose his suit, he shall let a freeman go within five days, but a slave he shall give back [illegible] (of his opponent). And if he let him not go or give him not back, (the judge) shall adjudge him to win in case of a freeman fifty staters, and a stater for each day until he let him go, and in case of a slave ten staters for each day until he let him go, and he shall give back a stater and a drachm for each day until he give him back into bonds. And if the judge shall adjudge (a fine), there shall be exacted within a year thereafter or less, not more, and with respect to the time the judge shall decide on oath.

And if the slave, in whosesoever case he be [illegible] his suit, take sanctuary, (the defendant) summoning him in the presence of two witnesses, fourscore, freemen shall [illegible] out (the foot) of the temple where ever he be in sanctuary, either (the defendant) himself or another or his people; and if he summon not and point not out, he shall restore what has been written.

And if he even five six cut pork in the year, he shall besides restore the single values, and if he die, while the suit is in contention, he shall restore the single value.

And if (one whom) Hulig lead away (a slave), or another lead away (a slave) or one Hulig, if he leave office, be shall content, and if he flee his suit he shall restore . . . what has been written.

To one that leads away (a slave) who in a suit . . . (or) pledged, there shall be no damage."



If one lie by force with a freeman or freewoman, he shall restore twofold, and if a male householder (force) a male or female householder, five drachms and if a male householder (force) a male or female householder, five staters, ten staters. If a slave (force) a freeman or freewoman, he shall restore a hundred staters, but if with (the man or woman) of a children person, ten staters. If a slave (force) a freeman or freewoman, he

If one should overpower by force an indoor slavewoman, he shall restore two staters, but if (he force) one already overpowered in the daytime, one obol, but if in the night, two obols: and the slave shall be more sworn.

If one attempt to lie with a freewoman in the hearing of a kinsman, he shall restore ten staters, if a witness should declare it.

If one be taken in adultery with a freewoman in (her) father's (house), or in (her) brother's, or in her man's, he shall restore a hundred staters, but if in another's fifty (staters). But if (he be taken) with the (woman) of a clubless man, ten (staters), and if a slave (be taken) with a freewoman, he shall restore twofold; if a slave with a slave, five (staters).

And he shall give notice in the presence of three witnesses to the kinsmen of him that is taken, to redeem in five days; and to the lord of a slave, in the presence of two witnesses. And if he shall not redeem, he shall be at the disposal of those who took him to deal with him however they will.

And if he say that he beguiled him, he that took him shall swear in the case of the fifty staters or more, himself with four others, each imprecating upon himself, and in the case of the clubless man, himself with two others, and in the case of the householder, his master with one other, that he took him in adultery and beguiled him not."

3.

"If a man and woman separate, she shall have her own things, which she had when she went to the man, and the half of the fruit, if it be from her own goods, and the...(part?) whatever it be (of) whatever she has woven, and five staters, if the man be the cause of the divorce; but if the man should say.....the judge shall decide on oath.

But if she should bear off anything else of the man's, she shall restore five staters, and whatever she bear off, itself (shall she give back), and whatever she have taken away, itself shall she give back. And whatsoever things she shall deny (having taken), the judge shall adjuge the woman to deny on oath by Artemis, near the Amyclacum near the Bowwoman. And whatever any one shall take away from her, after she has denied on oath, (he) shall restore five staters and the thing itself. And if a stranger join in packing up, he shall restore ten staters, and twofold the thing itself, whatsoever the judge shall swear he has joined in packing up.

If a man should die, leaving children, if the woman will, she shall be wedded, having her own things, and whatever her man have given her according to what is written, in presence of three witnesses, runners, freemen; but if she bear off anything of the children's there shall be right to sue.

And if he leave her childless, she shall have her own things, and of whatever she has woven the half, and of the fruit from within a.. share with those belonging, and anything her man have given her as is written; but if she bear off anything else, there shall be right to sue.

If one should overpower by force an indoor slavewoman, he shall restore two staters, but if (he force) one already overpowered in the daytime, one obol, but if in the night, two obols; and the slave shall be more worthy.

If one attempt to lie with a freewoman in the bearing of a witness, he shall restore ten staters, if a witness should declare it.

If one be taken in adultery with a freewoman in (her) father's (house), or in (her) brother's, or in her son's, he shall restore a hundred staters, but if in another's fifty (staters). But if (he be taken) with the (woman) of a slothful man, ten (staters), and if a slave (he be taken) with a freewoman, he shall restore twofold if a slave with a slave, five (staters).

And he shall give notice in the presence of three witnesses to the kinsmen of him that is taken, to redeem in five days; and to the lord of a slave, in the presence of two witnesses. And if he shall not redeem, he shall be at the disposal of those who took him to deal with him however they will.

And if he say that he defiled him, he that took him shall swear another with one other, that he took him in adultery and defiled him



"If a man and woman separate, she shall have her own things, which she had when she went to the man, and the half of the fruit, if it be from her own goods, and the...(part) whatever it be (of) whatever she has woven, and five staters, if the man be the cause of the divorce; but if the man should say.....the judge shall decide on oath.

But if she should bear off anything else of the man's, she shall restore five staters, and whatever she bear off, itself (shall she give back), and whatever she have taken away, itself shall she give back. And whatsoever things she shall deny (having taken), the judge shall oblige the woman to deny on oath by Artemis, bear the Amazonian near the Bosphorus. And whatever any one shall take away from her, after she has denied on oath, (he) shall restore five staters and the same sentence, and uncloak the thing itself, whatsoever the judge shall be more worthy to have joined in pecking it. And if a stranger join in pecking it, he shall restore ten staters, but if (he force) one already overpowered in the daytime, one obol, but if in the night, two obols; and the slave shall be more worthy.

If one attempt to lie with a freewoman in the bearing of a witness, he shall restore ten staters, if a witness should declare it.

If one be taken in adultery with a freewoman in (her) father's (house), or in (her) brother's, or in her son's, he shall restore a hundred staters, but if in another's fifty (staters). But if (he be taken) with the (woman) of a slothful man, ten (staters), and if a slave (he be taken) with a freewoman, he shall restore twofold if a slave with a slave, five (staters).

And he shall give notice in the presence of three witnesses to the kinsmen of him that is taken, to redeem in five days; and to the lord of a slave, in the presence of two witnesses. And if he shall not redeem, he shall be at the disposal of those who took him to deal with him however they will.

And if he say that he defiled him, he that took him shall swear another with one other, that he took him in adultery and defiled him



"If a man and woman separate, she shall have her own things, which she had when she went to the man, and the half of the fruit, if it be from her own goods, and the...(part) whatever it be (of) whatever she has woven, and five staters, if the man be the cause of the divorce; but if the man should say.....the judge shall decide on oath.

But if she should bear off anything else of the man's, she shall restore five staters, and whatever she bear off, itself (shall she give back), and whatever she have taken away, itself shall she give back. And whatsoever things she shall deny (having taken), the judge shall oblige the woman to deny on oath by Artemis, bear the Amazonian near the Bosphorus. And whatever any one shall take away from her, after she has denied on oath, (he) shall restore five staters and the same sentence, and uncloak the thing itself, whatsoever the judge shall be more worthy to have joined in pecking it. And if a stranger join in pecking it, he shall restore

If a man should die, leaving children, if the woman will, she shall be wedded, having her own things, and whatever her man have given her according to what is written, in presence of three witnesses, freemen; but if she bear off anything of the children's there shall be right to sue.

And if he leave her children, she shall have her own things, and of whatever she has woven the half, and of the fruit from within and of whatever those belonging, and anything her man have given her, share with those if she bear off anything else, there shall be right to sue.

And if a woman should die childless, there shall be given back to those belonging her own things, and the half of what she has woven, and the half of the fruit, if it be from her own things.

Guerdon if man or woman will to give (they shall give) either dress or twelve staters or a piece of goods worth twelve staters, and not more.

If a female householder be separated from a male householder in his life or by his death, she shall have her own things; but if she bear off anything else, there shall be right to sue."

4.

"If a woman bear a child while divorced, (she) shall send it to the man to his roof in the presence of three witnesses. And if he should not receive it, the child shall be at the mother's disposal to bring up or to put away; and the kinsmen and the witnesses shall be more sworn whether they sent the child.

And if a female householder bear a child while divorced (she) shall send it to the lord of the man, who wedded her, in the presence of two witnesses. And if he shall not receive it, the child shall be at the disposal of the lord of the female householder. And if she should be wedded again to the same man in the course of the first year, the child shall be at the disposal of the lord of the male householder, and he that sent it shall be more sworn and the witnesses.

A woman divorced, if she should cast away a child before sending according to what is written, shall restore in case of a free (child) fifty staters, in case of a slave five-and-twenty, if she lose the suit. But if a man has no roof whether she shall send it, or she do not see him, if she should put away the child, it shall be without damage (to her).

If a female householder unwedded should conceive and bring forth, the child shall be at the disposal of the lord of the father. But if the father should not be alive, it shall be at the disposal of the lords of the brothers."

5.

"The father shall have power over the children and over the goods, over the division (thereof), and the mother over her own goods. While they live, it shall not be necessary to divide; but if one should be cast in damages, division shall be made to him that is cast in damages as has been written.

And if one die, the roofs in the city and whatever is in the roofs, in which no householder houses, housing on the spot, and the cattle and the strong-footed, such as are not a householder's, shall be at the disposal of the sons, and all the other goods they shall well divide, and the sons as many soever as they be shall be allotted each two shares, and the daughters as many soever as they be, each one share.

(And they shall divide) the mother's things also, if she die, as. . . .And if there be no goods but there be a roof, the daughters shall have allotted to them, as has been written.

And if a woman should die childless, there shall be given back to those belonging her own things, and the half of what she has won, and the half of the fruit, if it be free her own things.

Overdue if man or woman will be give (they shall give) either three or twelve stalers or a piece of goods worth twelve staters, and not more.

If a female housebinder be separated from a male housebinder in his life or by his death, she shall have her own things, but if she bore off anything else, there shall be right to sue.

"If a woman bear a child while divorced, (she) shall send it to the man to ble root in the presence of three witnesses. And if he should not receive it, the child shall be at the mother's disposal to bring up or to put away; and the witnesses and the woman shall be more aware whether they send the child.

And if a female housebinder bear a child while divorced (she) shall send it to the lord of the man, the welded bor, in the presence of two witnesses. And if he shall not receive it, the child shall be at the disposal of the lord of the female housebinder. And if she should be welded again to the same man in the course of the first [illegible] the first [illegible] housebinder, and be like unto it shall [illegible] of the male

A woman divorced, if she should cast away a child before sole- lic according to what is written, shall restore in case of a free [child] fifty staters, in case of a slave five-and-twenty. If she love the wild. But if a man be to reef whether she shall send it, or she do not see him, if she should put away the child, it shall be without danger (to her).

If a female housebinder wedded should deprive and bring forth, the child shall be at the disposal of the lord of the father. But if the father should not be alive, it shall be at the disposal of the lords of the brothers."

"The father shall have power over the cuildren and over the goods, over the division (thereof), and the mother over her own goods. While they live, it shall not be necessary to divide but it one should be near in danger, division shall be made in his that is cast in danger as the four writing.

And if one die, the goods in the city and whatever is in the roots, in which no housebinder dwelled, belong to the sons, and the cattle and the stone-located, such as are not a housebinder's, shall be at the disposal of the sons, and all the other goods they shall well divide, and the sons as many soever as they be shall be allotted each two staters, and the daughters as many soever as they be, each one stater.

(And they shall divide) the mother's things also, if she die, [illegible] and if there be no goods but there is a root, the daughters shall have allotted to them, as has been written.

And if the father being alive will to give to her that is being wedded, he shall give according to what is written and not more. And to whomsoever he before gave or promised this shall she have and not be allotted other things. Whatever woman has no goods either from her father's gift or her brother's, or his promise or by allotment from the time that the Aethalian troop, Kyllos and friends, were rulers, these women shall have allotments, but for those previous there shall be no right to sue.

If a man or woman die, if there be children or children's children or children of these, they shall have the goods. And if there be none of these, but there be brethren of the deceased and brethren's children or children of these, they shall have the goods. And if there be none of these, but there be sisters of the deceased and sister's children or children's children, they shall have the goods. And if there be none of these, (then) to whomsoever it belongs, whenever it be, they shall take the goods to themselves. And if there should not be any belonging, then whoever be the lot of the house, these shall have the goods.

And if (of) those belonging, some will to divide the goods and some to not, the judge shall adjudge all the goods to be at the disposal of those who will to divide, until they divide. And if, after the judge has adjudged it, (any one) by force disturb or lead away or bear off, he shall restore ten staters and the thing itself twofold. And (in respect) of mortals and fruit and clothing and bracelets and superficial goods, if they will not to divide ..... shall decide on oath in reference to the matters in contention. And if in dividing the goods they do not agree about the division, they shall put up the goods for sale, and selling to whosoever offers most, they shall allot themselves (of) the value each the share belonging. And when they divide the goods, there shall be present three or more witnesses, runners, freemen.

If he give to a daughter, (it shall be) according to the same (rules)."

6.

"While the father lives, no one shall buy or take in pledge from the son (any) of the father's goods, but whatsoever he have himself acquired or had allotted to him, he shall sell if he will. Nor shall the father (sell or promise) the children's goods, whatever they have themselves acquired or had allotted to them, nor shall the man sell or promise the woman's nor the son the mother's. And if any one should buy or take in pledge or obtain promise, and it is written otherwise than these writings are written . . . . the goods shall be at the disposal of the mother and at the disposal of the woman, and he who sold or gave in pledge or promised shall restore twofold to him that bought or took in pledge or obtained promise, and if there be any other matter of damage, the single (value); and for matters previous there shall be no right to sue. And if the opposite contendant contend in respect of the thing, whatever they are contending about, that it is not the mother's or the woman's, he shall contend in whatever way it belongs (to contend) before the judge as each thing is written.

And if the mother die leaving children, the father shall have power over the mother's things, but shall not sell nor pledge unless the children being runners approve. And if one should buy or take in pledge otherwise, the goods shall be at the disposal of the

And if the father being alive will to give to her that is being
wedded, he shall give according to what is written and not more. And
to whosoever be before given or promised this shall she have and not
be allotted other things. Whatever woman has no goods either from
her father's, [illegible] or her brother's, or his [illegible] on [illegible]
from the sins that the Aetolian [illegible] but for those previous
there shall be no right to sue.

If a man or woman die, if there be children or children's chil-
dren or children of these, they shall have the goods. And if there
be none of these, they shall have the goods. And if
children or children of these, [illegible] to the deceased and brethren's
there be none of these, but there be sisters of the deceased and
sisters' children or children's children, they shall have the goods.
And if there be none of these, (then) to whomsoever it belongs, whom-
ever it be, they shall take the goods to themselves. And if there
these shall have the goods.

And if (if) these belonging, some will to divide the goods and
come to not, the judge shall adjudge all the goods to be at the
disposal of those who will to divide, until they divide. And if,
after the judge has adjudged it, (any one) by force disture or lead
away or bear off, he shall restore ten staters and the thing itself
involved. And (in respect) of mortals and fruit and clothing and
[illegible] and [illegible] goods, it [illegible] will not to divide .....
[illegible] shall desire or pass in relations to the effects of [illegible]. And
if in dividing the goods they do not agree about the division, they
shall put up the goods for sale, and selling to whomsoever offers
most, they shall allot themselves (of) the value soon the share
belonging. And when they divide the goods, there shall be present
three or more witnesses, runners, freemen.

If he give to a daughter, (it shall be) according to the name
(rules).

"While the father lives, to one shall buy or take in pledge
from the son (any) [illegible] goods, nor shall he [illegible] pledge
himself acquired or had allotted [illegible] him, he shall sell if he will.
But shall the father (sell or promise) the children's goods, whatever
they have themselves acquired or had allotted to them, nor shall the
son sell or promise the woman's not the woman's. And if
any one should buy or take in pledge or obtain promise, and it is
written otherwise than these efficacy are written . . . the goods
shall be at the disposal of the mother and at the disposal of the
woman, and he who sold or gave in pledge or promised shall restore
[illegible] to six time longer or took in pledge or obtained promise,
and if there be any other matter of dance, the single (value) and
for matters previous there shall be no right to sue. And if the
[illegible] be not [illegible] to the [illegible] whatever they
[illegible] [illegible] [illegible] contend in respect of the [illegible], whatever they
are contending about, that it is not the mother's or the woman's,
he shall contend in whatever way it belongs (to contend) before the
judge as each thing is written.

And if the mother die leaving children, the father shall have
power over the mother's things, but shall not sell nor pledge unless
the children being present approve. And if she should buy or take
in pledge otherwise, the goods shall be at the disposal of the

children, and he that sold or he that pledged shall restore to him that bought or took in pledge the double of the value, and if there be any other matter of damage, the single (value). But if he wed another woman, the children shall have power over the mother's things."

7.

"And if . . . . being held in bondage from a foreign state, and by his choice some one shall redeem him, he shall be at the disposal of the redeemer, until he pay back what belongs. And if they do not agree about the amount, or (it be asserted) that he redeemed him without his choice, the judge shall decide on oath in reference to the matters in contention."

8

"? ? . . . (if) coming to a freewoman he wed her, the children shall be free. But if a freewoman to a slave, the children shall be slave. And if there be born from the same mother free and slave children, if the mother die, if there be goods, the free children shall have them; but if freemen should not be forthcoming, those belonging shall take them to themselves."

9.

"If (one) after buying a slave from the market, shall not export him within sixty days, if he have wronged any one before or after, there shall be right of suit to him that has acquired (him)."

10.

"An heiress shall be wedded to her father's brother, the eldest of those that are. And if there be more heiresses and father's brothers, (the second) shall be wedded to the next eldest. And if there be no father's brothers, but brothers' sons, (she) shall be wedded to one that is (child) of the eldest. And if there be more heiresses and more brothers' sons, (the next eldest heiress) shall be wedded to another who is next to have one heiress and not more.

And so long as he to whom it belongs to wed be unripe, or the heiress (be unripe), the heiress shall have the roof, if there be one, and he to whom it belongs to wed shall have allotted to him the half of the produce of all. And if he to whom it belongs to wed, being aloof from running, will not, (though) grown, to wed her (though) grown, all the goods and the fruit shall be at the disposal of the heiress until he wed her. But if being a runner he to whom it belongs will not to wed her grown (and) willing to be wed, the kinsmen of the heiress shall contend, and the judge shall adjudge him to wed within two months; and if he wed her not as is written, she having all the goods (shall be wedded) to him that belongs if there be another. And if there should be none belonging, she shall be wedded to whomever she will of those of the tribe who ask.

And if (when) grown she will not be wedded to him that belongeth, or he that belongeth be unripe, and the heiress . . . . the heiress shall have the roof, if there be one, in the city and whatever is in the roof, and having allotted to her the half of the other things she shall be wedded to another, whomever she will go those of the tribe who ask; and a portion of the goods shall be given to one.

"And if . . . being held in bondage from a foreign state, and by his choice none but small reason has, he shall be at the disposal of the redeemer, until he pay back what belongs. And if they do not agree about the amount, or (it be asserted) that he redeemed him without his choice, the judge shall decide on oath in reference to the matters in contention."

8.

"[ ? . . . ] (if) coming to a freewoman he wed her, the children shall be free. But if a freeperson to a slave, the children shall be slaves. And if there be born from the same mother free and slave children, if the mother die, if there be goods, the free children shall have them; but if freemen should not be instructed, those belonging shall take them to themselves."

9.

"If (one) after having a slave from the mother, shall not redeem her within sixty days, it be have vicarved any one before or after, there shall be right of suit to him that has acquired (him)."

10.

"If believe shall be wedded to her (wife's) brother, the (son) of those that are, And if there be more believers and brother, (the second) shall be wedded to the next eldest. And if there be no (other's brother, but brothers' sons, (who) shall be wedded to one that is (child) of the eldest. And if there be more believe one more brothers' sons, (the next eldest believer) shall be wedded to another who is next to have one believe and not more.

. . . And as long as he to whom it belongs to wed be virgin, or the believe (be virgin), the believe shall have the rent, if there be one, and he to whom it belongs to wed shall have allotted to him the half of the produce of all. And if he to whom it belongs to wed, being aloof from husband, will not, (thumb) crown, (be) (thumb) crown, all the goods and the fruit shall be at the disposal of the believe will be wed her. But if being a runner be to whom it believe will not to wed her crown (and) willing to be wed, the fiancee of the believe shall contend, and the judge shall adjudge him to wed within two months; and if he wed remained as is written, she having all the goods (shall be wedded) to him that belongs if there be another. And if there should be some belonging, she shall be wedded to whoever she will of those of the tribe who ask.

And if (when) crown she will not be wedded to him that belongeth, or be that belongeth be virgin, and the believe . . . the believe shall have the rent, if there be one, it there be the half of the produce of the rent, and barley allotted to her the half of the other things she shall be wedded to another, whoever she will go those of the tribe who ask and a portion of the goods shall be given to one.

And if there should not be any persons belonging to the heiress as is written, she, having all the goods, shall be wedded to whomever of the tribe she will. And if no one of the tribe should will to wed her, the kinsmen of the heiress . . . . not . . . to wed her; and if one wed her within thirty days from the time they have (so) said, (well), but if not she shall wed another whomever she may be able.

And if, her father or brother having given her (in marriage), she become heiress, if he to whom they gave her being willing to wed, she should not be willing to be wedded, if she has had children, (then) having allotted to her (half) of the goods as has been written she shall be wedded to . . .; but if there should be no children, having all (the goods) she shall be wedded to him that belongs, if there be one, and if not, (then) as has been written.

If a man should die leaving children to an heiress, if she will she shall be wedded to whomever of the tribe she can, but without compulsion. But if the dead man should leave no children, she shall be wedded to him that belongs, as has been written. And if he to whom it belongs to wed the heiress should not be resident and the heiress be ripe, she shall be wedded to him that belongs, as has been written.

And (one) shall be heiress, if there be no father or brother from the same father. And over the working of the goods the father's brothers shall have power . . . . the half as long as she be . . . . And if while she is unripe, there should be no one belonging, the heiress shall have power over the goods and the fruit, and so long as she be unripe, she shall be brought up with her mother; and if there should not be mother, she shall be brought up with her mother's brothers.

And if any one should wed the heiress and it has been otherwise written . . . . those belonging (if) he leave an heiress . . . . mother's brothers to pledge . . . . the sale shall be lawful, and the . . . (if) any one should buy goods or take in pledge any of the goods of the . . . ., the goods shall be at the disposal of the heiress, and he that sold or pledged shall suit, twofold, and if there be any other damage he shall besides restore the single value, as . . . . and for matters previous there shall be no right to sue. And if the opposite contendant contend about the thing for which they are contending that it is not the heiress's, the judge shall decide on oath; and if he should win that it is not the heiress's, he shall contend, in whatever way it belongs (to contend) as each thing is written."

11.

"If a man should die having become surety or having lost a suit, or owing securities, or having cheated or having made an agreement, or another to him, (he) shall contend in the course of the first year; and the judge shall give judgment in reference to the matters in contention. If he contend upon a suit won, the judge and the registrar if he be alive and a citizen, and the witnesses who belong (shall declare), and of a suretyship and of securities, and of cheating and of an agreement, those who belong shall declare as witnesses. And if they fail, he shall adjudge that (the plaintiff), himself on oath and the witnesses, shall win the single value.

II.

"If a man should die having become surety or having lost a suit, or owing <u>securities</u>, or having <u>covenanted</u> or having <u>made an agreement</u>, or another in his [(the) (he)] shall <u>contend</u> in the course of the first years and the judge shall give judgment in reference to the matter in contention. If he contend upon a suit was, the judge and the registrar if he be alive and a citizen, and the witnesses who [(shall declare)] and of a surety[ship] and of <u>securities</u>, and of <u>checking</u> and of an <u>agreement</u>, those who [(shall declare as witnesses. And if they fail)], he shall ad[judge] that [the plaintiff] himself or both and the witnesses, shall [(be)] the single [(one)]. And if there should not be [(one)] the single [(one)] and the judge shall [(not)] [(declare)] [(the)] [(witnesses)] [(and)] [(the)] [(plaintiff)] [(himself)] [(or)] [(both)] [(and)] [(the)] [(witnesses)] [(shall)] [(be)] [(the)] [(single)] [(one)]. And if there should not be [(one)] the single [(one)] and the judge shall [(not)] [(declare)] [(the)] [(witnesses)] [(and)] [(the)] [(plaintiff)] [(himself)] [(or)] [(both)] [(and)] [(the)] [(witnesses)] [(shall)] [(be)] [(the)] [(single)] [(one)].

If a son become surety, so long as his father live, he shall be led away, himself and the goods, whatever he has acquired.

If any one do not give back . . . . (1½ lines broken) . . . if grown witnesses declare, in case of a hundred staters or more, three (witnesses), in case of less as far as ten staters, two, in case of less, one, he shall give judgment in reference to the declarations made. And if the witnesses should not declare, . . . . (2 lines broken) . . . he shall either deny on oath or . . . (15 lines wanting)."

12.

" . . . . son to mother . . . . a hundred staters or less, but not more; and if (he) should give more, if those belonging will, they shall pay back the money and have the goods. But if any one should give while owing money or when cast in damages or while a suit is in contention, if the remainder should not be of the worth of the damages, the gift shall be of no good."

13.

"(One) shall not buy a man that is pledged, before he that pledged have redeemed (him), nor one who is under contention, nor receive (such as gift?), nor obtain promise (of him), nor take (him), in pledge. And if any one should do any of these things, it shall be of no good, if two witnesses should declare (it)."

14.

"Adoption shall be whenever any one will. Adoption shall be in the market-place, when the citizens are assembled, from the stone from which addresses are made. And the adopter shall give to his own club a victim and a pitcher of wine.

And if (the adopted) take over all the goods and there dwell not with him natural children, he shall perform the divine and human (duties) of the adopter and take them on himself as is written for natural children. And if he will not to perform them as is written, those belonging shall have the goods. But if there be natural children to the adopter, with the males (shall share) the adopted as the females have allotted to them from their brothers; and if there be no males but females, the adopted (male) shall have an equal share: and he shall not be obliged to perform the duties of the adopter and to take to himself the goods, whatever the adopter have left; and more the adopted shall not come to.

And if the adopted should die without leaving natural children, the goods shall return to those who belong to the adopter.

And if the adopter (will?), he shall renounce in the market-place from the stone from which addresses are made, when the citizens are assembled. And he shall hand over . . . staters to the law-court. And the registrar shall give them back as a guest-present to him that was renounced.

And a woman shall not adopt, nor shall an ungrown male.

And these shall be dealt with, as he has written these writings, and for matters previous, however any one be, there shall no longer be right to sue either for the adopted or against the adopted."

"If a are become aunty, as long as sis father live, he shall be led away, himself and the goods, whatever he may acquired.

If any one is not give back . . . . (If three friends . . . if grass although during, in case of a crushed statues or more, three (witnesses), in case of less as far as two statute, two, in case of less, one, he shall give judgment in reference to the declarations made. And if the witnesses should not declare . . . . (3 lines broken) . . . he shall either deny on oath or . . . (10 lines wanting)."

" . . . . as to either . . . . a hundred statutes or less, let not cease, and if (he) should give case, if there declarer will, they shall pay back the money and have the goods. But if any one should give while going away or stay-out in hamper or while a wife is contesting, if the remainder should not be of the worth of the damages, the gift shall be of no good."

IX.

"(She) shall not buy a man that is pledged, before he that pledged have redeemed (him), nor one away is under protection, nor receive (such as gift?), nor obtain pledge (of him), nor take (him), in pledge. And if any one should do any of these things, it shall be of no good, if two witnesses should declare (so)."

X.

"Adoption shall be whatever any one will. Adoption shall be in the market-place, when the citizens are assembled, from the state from which adoptees are made. And the adopter shall give to his own city a victim and a pitcher of wine.

And if (the adopter) take over all the goods and there shall not with his natural children, he shall perform the divine cult (duties) of the adopter and take (his or himself as to) citizen for natural children. And if he will for (a) future time he is willing, these belonging shall have the goods. But if there be natural children to the adopter, with the sons (shall share) the adopter as the females have allotted to them from their (property); and if there be no males but females, the adopted (male) shall have as equal share, and he shall not be obliged to perform the duties of the adopter and to take to himself the goods, whatever the adopter have left; and who the adopted shall not done to.

And if the adopted should die without leaving natural children, the goods shall return to those who belong to the adopter.

And if the adopter (will), he shall produce in the authorities five the cities free which adoptees are made, when the citizens are assembled. And he shall bend over . . . . stones to the lawgiver. And the registrar shall give them back as a present to all that was rendered."

And a woman shall not adopt, nor shall be adopted male.

And there shall be dealt with, as he may utter these written, and for business previous, however any one be, there shall be liberty be right to use either for the married or against the adopter."

And these shall be dealt with, as he has written these writings, and for matters previous, however any one be, there shall no longer be right to sue either for the adopted or against the adopted."

15.

"Whoever leads away a man before trial, shall always be received (?)."

16.

"A judge, whatever it has been written he should judge according to witnesses or as denied on oath, shall so judge as has been written; and in respect of other matters he shall decide on oath in reference to the matters in contention."

17

"If (a man) die, owing money or having lost a suit, if those to whomsoever it belongs will to take over the goods, to restore for him the damages and the money to whomsoever he owes, they shall have the goods. And if they will not, the goods shall be at the disposal of those who won the suit or those to whom he owes the money, and other damage there shall be none to those who belong. And there shall be led away on account of the father the father's goods, and on account of the mother the mother's goods."

18.

"Woman who ever separates from a man, if the judge shall adjudge an oath, shall deny on oath within twenty days in the presence of the judge. Whatever he imputes to her, he shall give notice (thereof) at the commencement of the suit to the woman and to the judge and to the registrar the fourth day before in the presence of . . . ."

19.

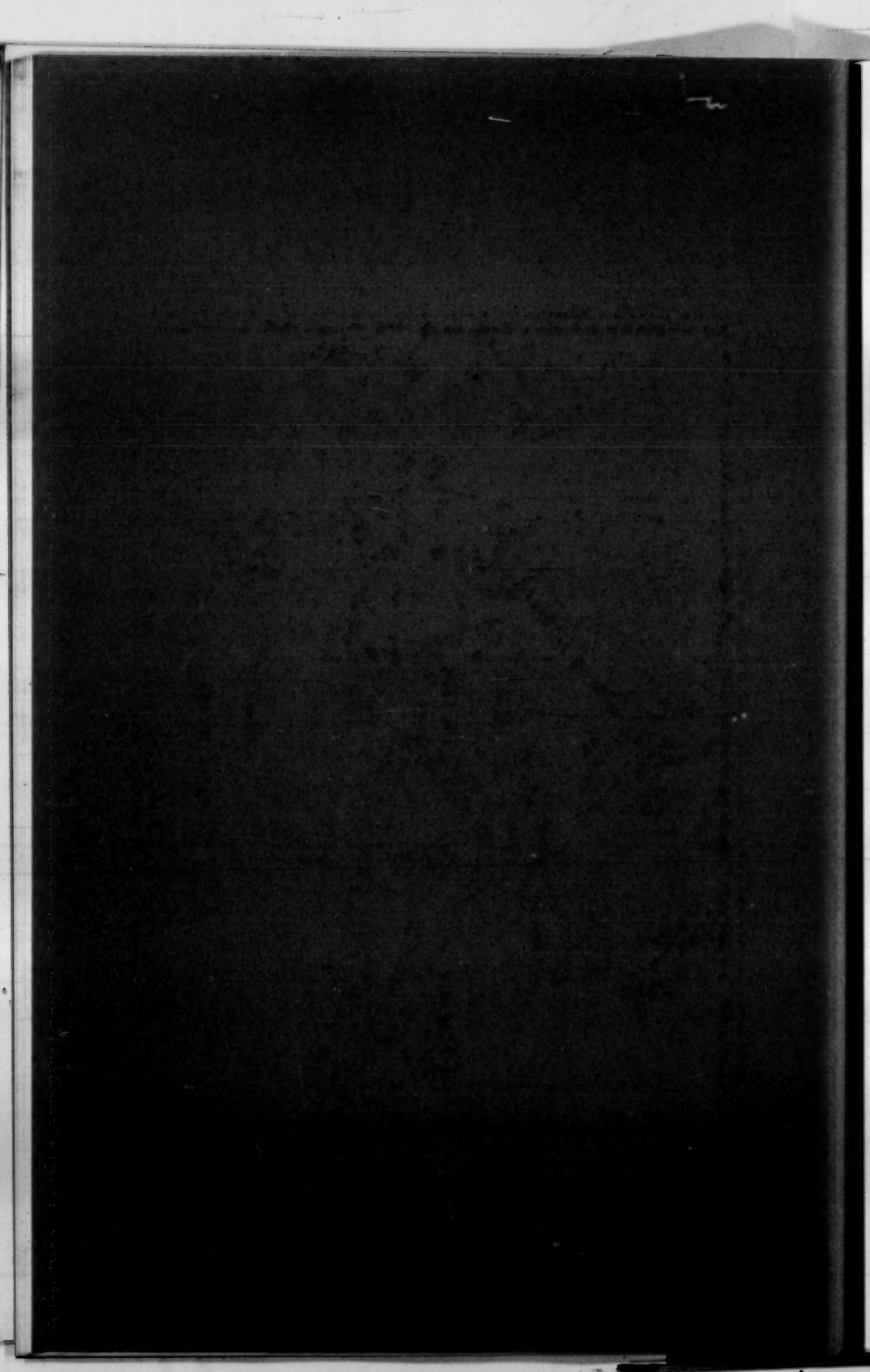
"If a son gave goods to his mother or a man to a woman, as had been written before these writings, there shall be no right to sue; but for the future he shall give as has been written."

20.

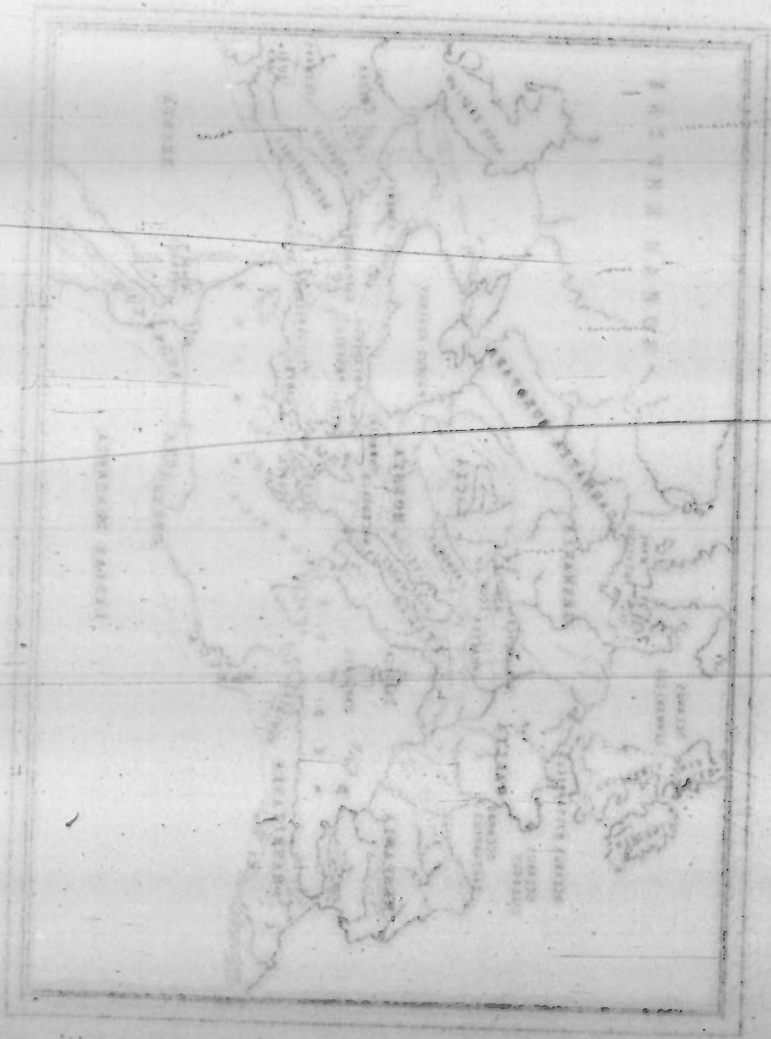
"Heiresses, if there be no orphan-judges, so long as they are unripe, shall be dealt with in accordance with what has been written. And whenever, there being no one belonging and no orphan-judges, an heiress be brought up with her mother, the father's brother and the mother's brother, who have been written, shall manage the goods and the produce, however they best can, until she be wedded. And she shall be wedded, when aged twelve."

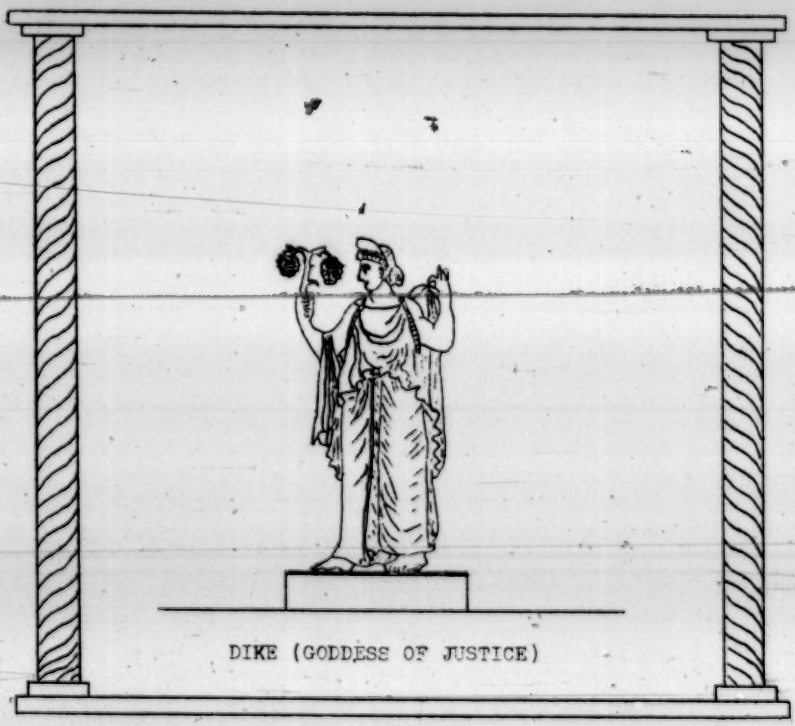
# PART VI.

# ROMAN

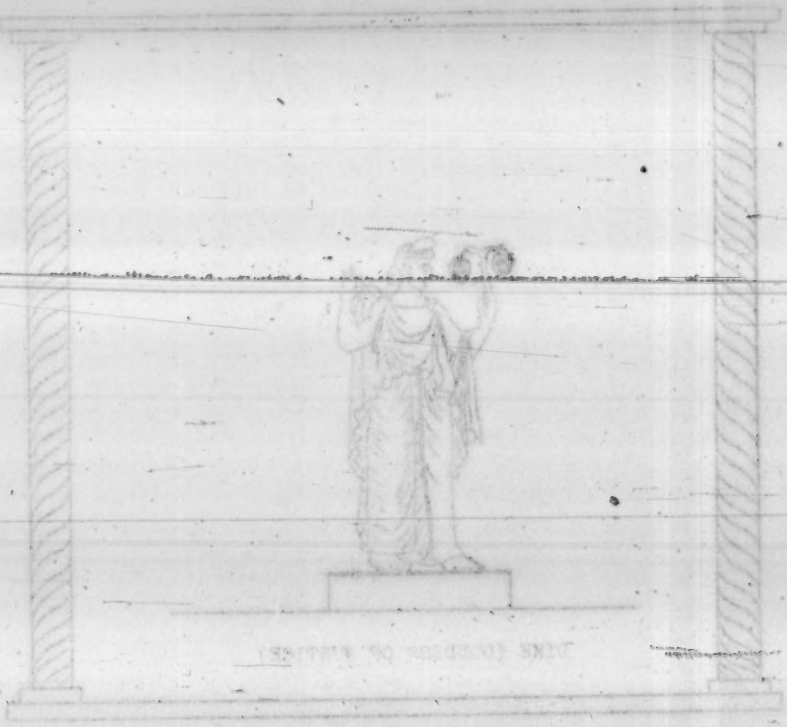


ROMAN EMPIRE
OCEANUS GERMANICUS
MARE SUEVICUM
OCEANUS BRITANNICUS
OCEANUS CALLICUS
OCEANUS CANTABRIUS
GERMANIA
SARMATIA EUROPAEA
GALLIA
RHAETIA
DACIA
MARE CASPIUM
POUTUS EUXINUS
HISPANIA
MOESIA
MACEDONIA
THRACIA
BITHYNIA
ARMENIA
COLCHIS
SARDINIA
LYDIA
PHRYGIA
CAPPADOCIA
ASSYRIA
MESOPOTAMIA
ELYMAIS
SUSIANA
MAURITANIA
NUMIDIA
CRETA
SYRIA
CYRENACIA
AEGYPTUS
ARABIA
LIBYAE DESERTA





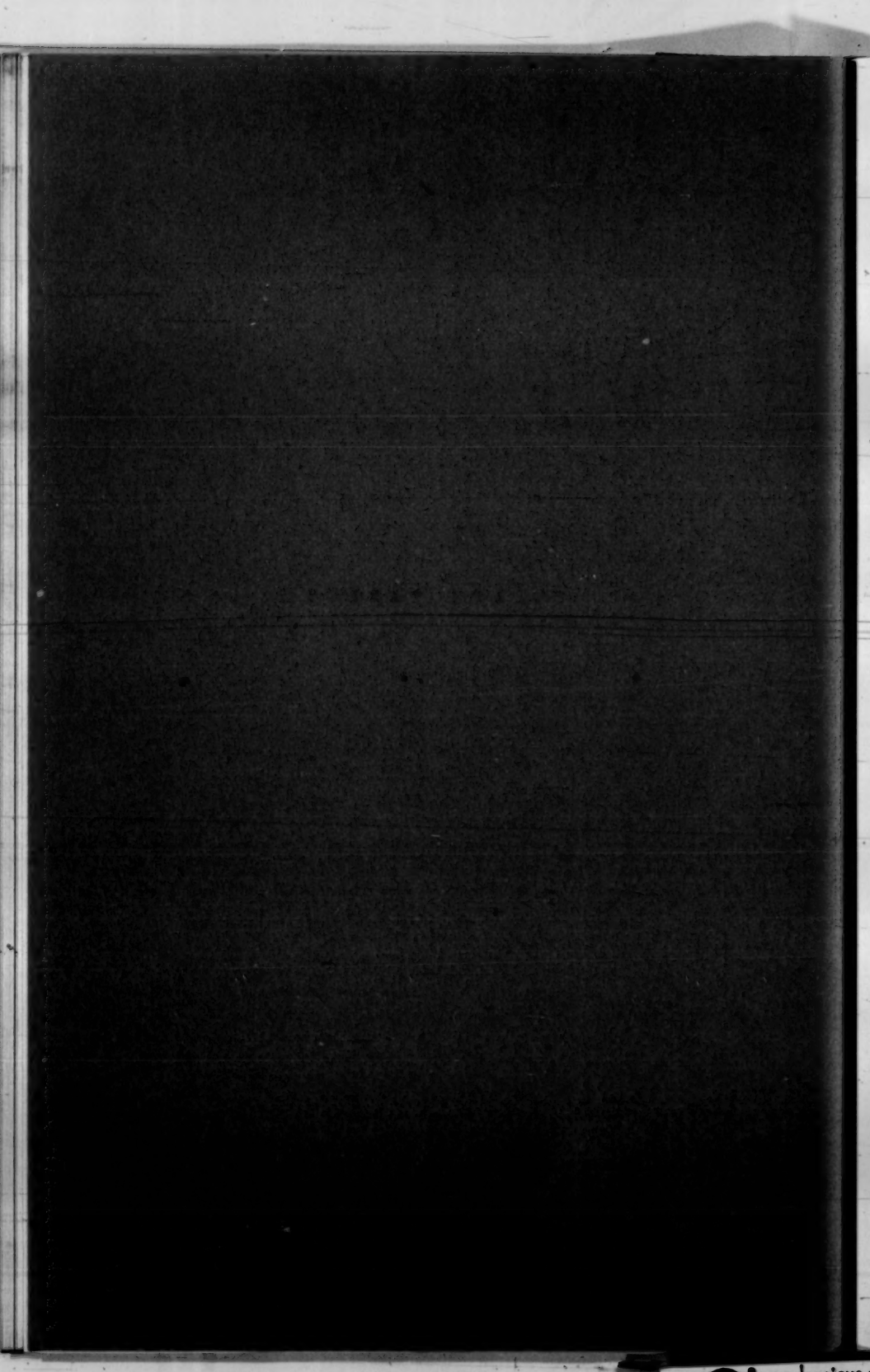
DIKE (GODDESS OF JUSTICE)



# INTRODUCTION

For a systematic exposition of Roman law and its relation to the Roman woman, we have selected the Twelve Tables, the Institutes of Justinian and the Digest or Pandects of Justinian. These laws have been placed in this chapter (VI) according to their place and date in the Roman Empire. This reprint will of course give the reader a definite and clear understanding of the actual position of the woman under the Roman Empire.

# TWELVE TABLES



# FRAGMENTS

# OF THE

# TWELVE TABLETS

## TABLE I.

## OF LAW SUITS.

I. "Law. Go immediately with the person who cities you before the judge."

II. "Law. If the person you cite refuses to go with you before the judge, take some that are present to be witnesses of it, and you shall have a right to compel him to appear."

III. "Law. If the person cited endeavors to escape from you, or puts himself into a posture of resistance, you may seize his body."

IV. "Law. If the person prosecuted be old, or infirm, let him be carried in Jumentum, or open carriage. But if he refuse that, the prosecutor shall not be obliged to provide him an Arcera, or covered carriage."

V. "Law. But if the person cited find a surety, let him go."

VI. "Law. Only a rich man shall be security for a rich man. But any security shall be sufficient for a poor man."

VII. "Law. The judge shall give judgment according to the agreement made between the two parties by the way."

VIII. "Law. If the person cited has made no agreement with his adversary, let the Praetor hear the cause from sunrising till noon; and let both parties be present when it is heard, whether it be in the Forum, or Comitium."

IX. "Law. Let the same Praetor give judgment in the afternoon, though but one of the parties be present."

X. "Law. Let no judgments be given after the going down of the sun."

XI. "Law. When the parties have pitched upon a judge or arbitrator by consent, let them give securities that they will appear. Let him who does not appear in court, pay the penalty agreed upon, unless he was hindered by some great fit of sickness, or by the performance of some vow, or by business of state, or by some indispensable engagement with a foreigner. If any one of these impediments happen to the judge or arbitrator, or either of the parties, let the hearing be put off to another day."

XII. "Law. Whoever shall not be able to bring any witnesses to prove his pretensions before the judge, may go and make a clamour for three days together, before his adversary's house."

## TABLE II.

### OF ROBBERIES.

I. "Law. He that is attacked by a robber in the night, let him not be punished if he kills him."

II. "Law. If the robbery be committed by day, and if the robber be taken in the fact, let him be beaten with rods, and become the slave of him whom he robbed. If the robber be a slave already, let him be beaten with rods, and thrown down headlong from the top of the capitol. If he be a child, under the age of puberty, let him be corrected, according to the Praetor's discretion, and let reparation be made to the injured party."

III. "Law. When robbers attack any person with arms, if the person attacked has cried out for help, he shall not be punished if he kill the robbers."

IV. "Law. When upon a legal search any stolen goods are found in a house, the robbery shall be punished upon the spot, as if openly and publicly committed."

V. "Law. For robberies committed privately, the robber shall be condemned to pay double the value of the things stolen."

VI. "Law. Whosoever shall cut down trees, which do not belong to him, he shall pay 25 Asses of brass, for every tree so felled."

VII. "Law. If any one comes privately, by night, and treads down another man's field of corn, or reaps his harvest, let him be hanged up, and put to death, as a victim devoted to Ceres. But if he be a child, under the age of puberty, let the Praetor order him to be corrected as he shall think fit, or let double satisfaction be made for the damage he has done."

VIII. "Law. If a robber and the person robbed agree together upon terms of restitution, no farther action shall lie against the robber."

IX. "Law. Prescription shall never be pleaded as a right to stolen goods, nor shall a foreigner have a right to the goods of any Roman citizen, by the longest possession."

X. "Law. If any one betrays his trust, with respect to what is deposited in his hands, let him pay double the value of what was so deposited, to him who entrusted him with it."

XI. "Law. If any one finds any of his goods in another man's possession, who became possessed of them by a breach of trust, let the Praetor nominate three arbitrators to judge of it. And let the wrongful possessor pay double the value of what he has gained by detaining them."

XII. "Law. If a slave has committed a robbery, or done any damage, with the privity, and at the instigation of his master, let the master deliver up the slave to the person injured, by way of compensation."

TABLE II.

OF ROBBERIES.

## TABLE III.

### OF LOANS, AND THE RIGHT OF CREDITORS OVER THEIR DEBTORS.

I. "Law. Let him who takes more than one per cent interest for money, be condemned to pay four times the sum lent."

II. "Law. When any person acknowledges a debt, or is condemned to pay it, the creditor shall give his debtor thirty days for the payment of it: After which he shall cause him to be seized, and brought before a judge."

III. "Law. If the debtor refuses to pay his debt, and can find no security, his creditor may carry him home, and either tie him by the neck, or put irons upon his feet, provided the chain does not weigh above fifteen pounds; but it may be lighter, if he pleases."

IV. "Law. If the captive debtor will live at his own expense, let him; if not, let him who keeps him in chains allow him a pound of meal a day, or more, if he pleases."

V. "Law. The creditor may keep his debtor prisoner for sixty days. If in this time the debtor does not find means to pay him, he that detains him shall bring him out before the people three market-days, and proclaim the sum, of which he has been defrauded."

VI. "Law. If the debtor be insolvent to several creditors, let his body be cut in pieces on the third market-day. It may be cut into more or fewer pieces with impunity: Or, if his creditors consent to it, let him be sold to foreigners beyond the Tiber."

## TABLE IV.

### OF THE RIGHTS OF FATHERS OF FAMILIES.

I. "Law. Let a father have the power of life and death over his legitimate children, and let him sell them when he pleases."

II. "Law. But if a father has sold his son three times, let the son then be out of his father's power."

III. "Law. If a father has a child born, which is monstrously deformed, let him kill him immediately."

IV. "Law. Let not a son, whose father has so far neglected his education as not to teach him a trade, be obliged to maintain his father in want; otherwise let all sons be obliged to relieve their fathers."

V. "Law. Let not a bastard be obliged to work to maintain his father."

TABLE III.

OF USAGE, AND THE RIGHT OF CREDITORS OVER THEIR DEBTORS.

I. "Law. Let him who takes more than one per cent interest for money, be condemned to pay four times the sum lent."

II. "Law. When only persons acknowledge a debt, or lie obliged to pay it, the creditor shall give his debtor thirty days for the payment of *his*. After which he shall cause him to be arrested, and bring *it* before a judge."

III. "Law. If the debtor refuses to pay his debt, and can plead no necessity, his creditor may carry him home, and either tie him by the neck, or put irons upon his feet, provided the chain does not weigh above fifteen pounds: but it may be lighter, if he pleases."

IV. "Law. If the captive debtor will live at his own expence, let him; if not, let him who keeps him in prison allow him a pound of meal a day, or more, if he pleases."

V. "Law. The creditor may keep his debtor prisoner for sixty days. If in this time the debtor does not find means to pay him, he may sell him out of the country, or put him to death. If there are many creditors, and *several* the sum, of which he was defrauded."

VI. "Law. If the debtor be insolvent, [illegible] let his body be cut in pieces on the third market-day. It may be cut into more or fewer pieces with impunity. If his creditors consent to it, let him be sold to foreigners beyond the Tiber."

TABLE IV.

OF THE RIGHTS OF FATHERS OF FAMILIES.

I. "Law. Let a father have the power of life and death over his [illegible] children, and let his wife be pleased."

II. "Law. But if a father has sold his son three times, let the son then be out of his father's power."

III. "Law. If a father has a child born, while he mentally deformed, let him kill his [illegible]."

IV. "Law. Let not a son, whose father has not lawfully his education at all to teach him a trade, be obliged to maintain his father in want; otherwise let all sons be obliged to relieve their fathers."

V. "Law. Let not a mother be obliged to work to maintain her father."

## TABLE V.

### OF INHERITANCES AND GUARDIANSHIPS.

I. "Law. After the death of a father of a family, let the disposition be made of his estate, and his appointment concerning the guardianship of his children be observed."

II. "Law. If he dies intestate, and has no children to succeed him, let his nearest relations be his heirs; if he has no near relation, let a man of his own name be his heir."

III. "Law. When a freedman dies intestate, and without heirs, if his patron be alive, or his left children, let the effects of the freedman go to the family of his patron."

IV. "Law. After the death of a debtor, his debts shall be paid by his heirs, in proportion to the share they have in his effects, if they please, and the Praetor shall appoint three arbitrators to make the division."

V. "Law. If a father of a family dies intestate, and leaves an heir under age, let the child's nearest relation be his guardian."

VI. "Law. If anyone becomes made, or prodigal, and has nobody to take care of him, let a relation, or if he has none, a man of his own name, have the care of his person and estate.

## TABLE VI.

### OF PROPERTY AND POSSESSION.

I. "Law. When a man conveys his estate to another, let the terms of the conveyance create the right."

II. "Law. If a slave, who was made free on condition of paying a certain sum, be afterwards sold, let him be set at liberty, if he pay the person who has bought him, the sum agreed upon."

III. "Law. Let not any piece of merchandise, though sold and delivered, belong to the buyer, till he has paid for it."

IV. "Law. Let two years' possession amount to a prescription for lands, and one for moveables."

V. "Law. In litigated cases the presumption shall always be on the side of the possessor; and in disputes about liberty or slavery the presumption shall always be on the side of liberty."

## TABLE VII.

### OF TRESPASSES AND DAMAGES.

I. "Law. If a beast does any damage in a field, let the master of the beast make satisfaction, or give up his beast."

II. "Law. If you find a rafter or a pole which belongs to you, in another man's house or vineyard, and they are made use of, do not pull down the house, or ruin the vineyard; but

## TABLE V.

## TABLE VI.

## TABLE VII.

make the possessor pay double the value of the thing stolen; and when the house is destroyed, or the pole taken out of the vineyard, then seize what's your own."

III. "Law. Whoever shall maliciously set fire to another man's house, or an heap of corn near his house, shall be imprisoned, scourged, and burnt to death. If he did it by accident, let him repair the damage; and if he be a poor man, let him be slightly corrected."

IV. "Law. Whoever shall deprive another of the use of a limb, shall be punished according to the law of retaliation, if the person injured does not agree to accept some other satisfaction."

V. "Law. If he has only dislocated a bone, let him pay three hundred pounds of brass if the sufferer be a freedman, and a hundred and fifty if he be a slave."

VI. "Law. For common blows with the fist, and injurious words, the punishment shall be twenty-five Asses of brass."

VII. "Law. Whoever slanders another by words, or defamatory verses, and injuries his reputation, shall be beaten with a club."

VIII. "Law. Let him who has once been a witness, and refuses to bear witness again, though a public person, be deemed infamous, and made incapable of bearing witness any more."

IX. "Law. Let every false witness be thrown down headlong from the Capitol."

X. "Law. Whoever shall wilfully kill a freedman or shall make use of magical words to hurt him, or shall have prepared poison for him, or given it to him, shall be punished as an homicide."

XI. "Law. Let all Parricides be thrown into the river, sewed up in a leather bag, with their heads veiled."

XII. "Law. The guardian who manages the affairs of his ward ill, shall be reprimanded; and if he be found to have cheated him, he shall restore double."

XIII. "Law. A patron who shall have defrauded his client, shall be execrable."

## TABLE VIII.

### OF ESTATES IN THE COUNTRY.

I. "Law. Let the space of two feet and an half of ground be always left between one house and another."

II. "Law. Societies may make what bylaws they please among themselves, provided they do not interfere with the public laws."

III. "Law. When two neighbours have any disputes about their bounds, the Praetor shall assign them three arbitrators."

IV. "Law. When a tree planted in a field does injury to an adjoining field by its shade, let its branches be cut off fifteen feet high."

V. "Law. If the fruit of a tree falls into a neighbouring field, the owner of the tree may go and pick it up."

VI. "Law. If a man would make a drain, to carry off the rain water from his ground to his neighbour's, let the Praetor appoint three arbitrators to judge of the damage the water may do, and prevent it."

VII. "Law. Roads shall be eight feet wide, where they run straight, and where they turn, sixteen."

VIII. "Law. If a road between two fields be bad, the traveler may drive through which field he pleases."

## TABLE IX.

### OF THE COMMON RIGHTS OF THE PEOPLE.

I. "Law. Let not privilege be granted to any person."

II. "Law. Let both debtors who are got out of slavery, and strangers who have rebelled, and returned to their duty, be restored to their ancient rights, as if they never offended."

III. "Law. It shall be a capital crime for a judge or arbitrator to take money for passing judgment."

IV. "Law. Let all causes, relating to the life, liberty, or rights of a Roman citizen, be tried only in Comita by Centuries."

V. "Law. Let the people appoint Quaestors, to take cognizance of all capital cases."

VI. "Law. Whoever shall hold seditious assemblies in the city by night, shall be put to death."

VII. "Law. Let him who shall have solicited a foreigner to declare himself against Rome, or shall have delivered up a Roman citizen to a foreigner, lose his life."

VIII. "Law. Let only the last laws of the people be in force, (i. e. let the last supercede all former ones, in the same case made and provided.)"

## TABLE X.

### OF FUNERALS AND ALL CEREMONIES RELATING TO THE DEAD.

I. "Law. Let no dead body be interred, or burnt within the city."

II. "Law. Let all costliness and excessive wailings be banished from funerals."

III. "Law. Let not the wood, with which funeral piles are built, be cut with a saw."

I. "Law. Let no dead body be interred, or burnt within the city."

II. "Law. Let all contentions and controversies relating to penalties from funerals."

III. "Law. Let not the wood, with which funeral piles are built, be cut with a saw."

IV. "Law. Let the dead body be covered with no more than three habits, bordered with purple; and let no more than ten players upon the flute be employed in celebrating the obsequies."

V. "Law. Let not the women tear their faces, or disfigure themselves, or make hideous outcries."

VI. "Law. Let not any part of a dead body be carried away, in order to perform other obsequies for the deceased, unless he died in war, or out of his own country."

VII. "Law. Let no slaves be embalmed after their death; let there be no drinking around a dead body; nor let any perfumed liquors be poured upon it."

VIII. "Law. Let no crowns, festoons, perfuming pots, or any kind of perfume, be carried to funerals."

IX. "Law. If the deceased has merited a crown in the public games, by any exploit of his own, or the expertness of his slaves, or the swiftness of his horses, let his panegyrick be made at his funeral, and let his relations have leave to put a crown upon his head, as well during the seven days he remains in the house, as when he is carried to be buried."

X. "Law. Let no man have more than one funeral made for him, or more than one bed put under him."

XI. "Law. Let no gold be used in any obsequies, unless the jaw of the deceased has been tied up with gold thread. In that case the corpse may be interred or burnt with the gold thread."

XII. "Law. For the future, let no sepulchre be built, or funeral pile raised, within sixty feet of any house, without the consent of the owner of the house."

XIII. "Law. Prescription shall never be pleaded against a man's right to his burial place, or the entrance to it."

## TABLE XI.

### OF THE WORSHIP OF THE GODS, AND OF RELIGION.

I. "Law. Let all persons come with purity and piety to the assemblies of religion, and banish all extravagance from thence. If any one does otherwise, may the Gods themselves revenge it."

II. "Law. Let no person have particular Gods of his own; or worship any new and foreign ones in private, unless they are authorized by public authority."

III. "Law. Let every one enjoy the temples consecrated by his forefathers, the sacred groves in his fields, and the oratories of his Lares. And let every one observe the rites used in his own family, and by his ancestors, in the worship of his domestic Gods."

IV. "Law. Honour the Gods of Heaven, not only those who have always been esteemed such, but those likewise whose merit has raised them thither, as Hercules, Bacchus, Aesculapius, Castor, Pollux, and Romulus."

## TABLE XI.

### OF THE DUTIES OF THE DEAD, AND OF SEPULCHRE.

V. "Law. Let those commendable qualities, by which heroes obtained Heaven, be ranked among the Gods, as Understanding, Virtue, Piety, Fidelity; and let temples be erected to them. But let no worship ever be paid to any vice."

VI. "Law. Let the most authorized ceremonies be observed."

VII. "Law. Let lawsuits be suspended on festivals, and let the slaves have leave to celebrate them after they have done their work. That it may be known on what days they fall, let them be set down in the calendars."

VIII. "Law. Let the Priests offer up in sacrifice to the Gods, on certain days, the fruits of the earth, and berries; and on other days abundance of milk, and young victims. For fear this ceremony should be omitted, the Priests shall end their year with it. Let them likewise take care to choose for every God the victim he likes. Let there be priests appointed for some Gods, Flamines for others, and Pontifices to preside over them all."

IX. "Law. Let no woman be present at the sacrifices which are offered up in the night, except at those which are made for the people, with the usual ceremonies. Nor let any one be initiated into the mysteries brought from Greece, but those of Ceres."

X. "Law. If anyone steals what belongs, or is devoted to the Gods, let him be punished as a parricide."

XI. "Law. Leave perjury to be punished with death by the Gods, and let it be punished with perpetual disgrace by men."

XII. "Law. Let the Pontifices punish incest with death."

XIII. "Law. Let every one strictly perform his vows; but let no wicked person dare to make my offerings to the Gods."

XIV. "Law. Let no man dedicate his field to the service of the altar; and let him be discreet in his offerings of gold, silver, or ivory. Let no man dedicate a litigated estate to the Gods; if he does, he shall pay double the value of it to him whose right it shall appear to be."

XV. "Law. Let every man constantly observe his family festivals."

XVI. "Law. Let him who has been guilty of any of those faults, which made man execrable, and are not to be atoned for by expiations, be deemed impious. But let the priests expiate such as are to be expiated."

## TABLE XII.

### OF MARRIAGE, AND THE RIGHT OF HUSBANDS.

1. "Law. When a woman shall have cohabited with a man for a whole year, without having been three nights absent from him, let her be deemed his wife."

II. "Law. If a man catches his wife in adultery, or finds her drunk, he may, with the consent of her relations, punish her even with death."

[illegible]

[illegible]

[illegible]

III. "Law. When a man will put away his wife, the form of doing it shall be by taking from her the keys of the house, and giving her what she brought. This shall be the manner of a divorce."

IV. "Law. A child born of a widow, in the tenth month after the decease of her husband, shall be deemed legitimate."

V. "Law. It shall not be lawful for the Patricians to intermarry with the Plebians."

# THE INSTITUTES OF JUSTINIAN

andronicus

BOOK I.

TITLE III.

DE JURE PERSONARUM.

Sec. 3. "Slaves are denominated servi, from the practice of our generals to sell their captives, and thus preserve, (servare) and not slay them. Slaves are also called mancipia in that they are taken from the enemy by hand (manucapti.)"

Sec. 4. "Slaves are born such, or become so. They are born such of bondwomen; they become so either by the law of nations, that is, by captivity; or by the civil law; as when a free person, above the age of twenty, suffers himself to be sold, for the sake of sharing the price given for him."

TITLE IV.

DE INGENUIS.

Sec. 1a. "A freeman is one who is born free, by being born in matrimony, of parents, who are both free, or both freed; or of parents, one free, the other freed. But one born of a free mother, although the father be a slave, or unknown, is free; notwithstanding he was conceived discreditably. And if the mother is free at the time of the birth, although a bondwoman when she conceived, the infant will be free. Also if a woman, free at conception, becomes a slave and is delivered, her child is nevertheless free born; for the misfortune of the mother ought not to prejudice her unborn infant. It has been a question whether the child of a woman, who is made free during pregnancy, but becomes bond before delivery, would be free born? Martianus proves the affirmative; for he deems it sufficient to the unborn child if the mother hath been free at any time between conception and delivery; and this is true."

Sec. 1. "It will not injure a man born free to have been in servitude, and afterwards manumitted; for it hath been often settled that manumission shall not prejudice free birth."

TITLE V.

DE LIBERTINIS.

Sec. 1a. "Freedmen are those, who have been manumitted from just servitude. Manumission, manu-datio, implies the giving of liberty; for whoever is in servitude, is subject to the hand and power of another; but whoever is manumitted is free from both."

"Manumission took its rise from the law of nations; for all men by the law of nature are born free; nor was manumission heard of while servitude was unknown. But when servitude, under sanction of the law of nations, invaded liberty, the benefit of manumission became then a consequence. For all men at first were denominated by one common appellation, until, by the law of nations,

dropicus publishing company, inc.

they began to be divided into three classes, viz. into liberi, or freemen, servi, or slaves, and libertini, freedmen who have ceased to be slaves."

Sec. 1. "Manumission is effected by various ways; either in the face of the church, according to the imperial constitutions, or by the vindicta, or in the presence of friends, or by letter, or by testament, or by any other last will. Liberty may also be conferred upon a slave by diverse other methods, some of which were introduced by former laws, and others by our own."

Sec. 2. "Slaves may be manumitted by their masters at any time; even on the way, as while the praetor, the governor of a province, or the proconsul is going to the bath, or to the theatre."

Sec. 3. "Freedmen were formerly distinguished by a threefold division. Those who were manumitted, sometimes obtained the greater liberty, and became Roman citizens; sometimes only the lesser, and became Latins, under the law Junia Norbana; and sometimes only the inferior liberty, and became Dedititii, by the law Aelia Sentia. But, the condition of the Dedititii differing but little from slavery, has been long disused; neither has the name of Latins been frequent. Our piety therefore, leading us to reduce all things into a better state, we have amended our laws by two constitutions, and re-established the antient usage; for antiently liberty was simple and undivided; that is, it was conferred upon the slave, as his manumittor possessed it; admitting this single difference, that the person manumitted became only a freedman, although his manumittor was a freeman."

"We have abolished the Dedititii by a constitution published among our decisions, by which, at the instance of Tribonian, our Quaestor, we have suppressed all disputes concerning the antient law. We have also, at his suggestion, altered the condition of the Latins and corrected the laws, which related to them, by another constitution, conspicuous among the imperial sanctions; and we have made all the freedmen in general citizens of Rome, regarding neither the age of the manumitted, nor of the manumittor, nor the antient forms of manumission. We have also introduced many new methods, by which slaves may become Roman citizens; the only liberty that can now be conferred."

## TITLE VI.

### QUI ET EX QUIBUS CAUSIS, MANUMITTERE NON POSSUNT.

Sec. 1. "A master, who is insolvent, may appoint a slave to be his heir with liberty, that thus the slave may obtain his freedom and become the only and necessary heir of the testator, provided no other person is also heir by the same testament; and this may happen, either because no other person was instituted heir or because the person, so instituted, is unwilling to act. This privilege of masters was for wise reasons established by the law Aelia Sentia; for it became necessary to provide, that indigent men, to whom no man would be a voluntary heir, might have a slave for a necessary heir to satisfy creditors; or that the creditors should sell the heriditary effects in the name of the slave, lest the deceased should suffer ignominy."

Sec. 2. "A slave also becomes free by being instituted an heir, although his freedom be not mentioned; for our constitution respects not only the insolvent master, but, by a new act of

androniqus

humanity, it extends generally; so that the institution of an heir, implies the grant of liberty. For it is highly improbable that a testator, although he has omitted to mention liberty in his will, could mean that the person instituted should remain a slave and himself be destitute of an heir."

Sec. 5. "Just reasons for manumission, are that the person to be manumitted is father or mother to the manumittor, his son or daughter, his brother or sister, his preceptor, his nurse, his foster child, or his foster brother; or to constitute him his proctor; or his bondwoman, with an intent to marry her, provided the marriage is performed within six months. But a slave who is to be constituted proctor, cannot be manumitted for that purpose if under seventeen."

Sec. 7. "When certain bounds were prescribed by the law Aelia Sentia to all minors under twenty, with regard to manumission, it was observed that any person who had completed fourteen years, might make a testament, institute an heir, and bequeath legacies, and yet that no person, under twenty, could confer liberty; which was not longer to be tolerated; for can any just cause be assigned why a man, permitted to dispose of all his effects by testament, should be debarred from enfranchising his slaves. But liberty being of inestimable value and our ancient laws prohibiting any person to make a grant of it who is under twenty years of age, we therefore make choice of a middle way and permit all, who have attained their eighteenth year, to confer liberty by testament. For since, by former practice, persons at eighteen years of age were permitted to plead for their clients, there is no reason why the same stability of judgment which qualifies them to assist others, should not enable them to be of service to themselves also by having the liberty of enfranchising their own slaves."

## TITLE VIII.

### DE HIS, QUI SUI VEL ALIENI JURIS SUNT.

Sec. 1a. "We now proceed to another division of persons; for some are independent, and some are subject to the power of others. Of those, who are subject to others, some are in the power of parents, others of the masters. Let us then inquire, who are in subjection to others; for, when we shall ascertain these, we shall at the same time discover who are independent. And first of those, who are in the power of masters."

Sec. 1. "All slaves are in the power of their masters, a power derived from the law of nations; for it is observable among all nations, that masters have always had the power of life and death over their slaves and that whatever the slave acquires, is acquired for the master."

Sec. 2. "All our subjects are now forbidden to inflict any extraordinary punishment upon their slaves, without legal cause. For, by a constitution of Antoninus, whoever causelessly kills his own slave, is to be punished equally as if he had killed the slave of another. The too great severity of masters is also restrained by another constitution of Antoninus, who being consulted by certain governors of provinces, concerning slaves who take sanctuary, either in temples or at the statues of the emperors, ordained, that if the severity of masters should appear excessive, they might be compelled to make sale of their slaves upon equitable terms, so that the masters might receive the value; and properly; inasmuch as it is for the public good that no one should be permitted to misuse even his own property. The words

of this rescript, sent to Aelius Martiansus, are these, 'Tha power of masters over their slaves ought to be protected; nor ought any man to be deprived of his just right. But it is for the interest of all masters, that relief against cruelties, the denial of sustenance, or any other insufferable injury, should be granted to those who justly implore it'. Therefore, look into the complaints made by the family of Julius Sabinus, whose slaves took sanctuary at the sacred statue; and, if proof be made that they have been too hardly treated or greatly injured, order them to be forthwith sold so that they be no longer subject to their former master; and, if Julius Sabinus attempt to evade our constitution, let him know that I shall put it in force against him with more severity."

## TITLE IX.

## DE PATRIA POTESTATE.

Sec. 1a. "Our children, begotten in lawful wedlock, are under our power."

Sec. 1. "Matrimony is a connection between a man and woman, implying a mutual and exclusive cohabitation during life."

Sec. 2. "The power which we have over our children is peculiar to the citizens of Rome; for no other people have the same power over their children, which we have over ours."

Sec. 3. "The child of you and your wife, is under your power. The issue of your son and son's wife, that is, your ff grandsons or granddaughters are equally so; so are your great-grandchildren, etc. But children born of a daughter are not in your power, but in the power of their father or grandfather."

## TITLE X.

## DE NUPTIIS.

Sec. 1a. "The citizens of Rome contract valid matrimony, when they follow the precepts of the law; males, when they arrive at puberty, and females, when they attain to a marriageable age. The males, whether patres familiarum, fathers of a family, or filii familiarum; sons of a family; but, if they are sons of a family, they must first obtain the consent of the parents, under whose power they are. For reason, both natural and civil, convinces us, that the consent of parents should precede marriage; hence arose the question, whether the son of a madman could contract matrimony? But opinions being various, we decided that the son as well as the daughter of a madman, may marry without intervention of the father, provided the rules of our constitution are observed."

Sec. 1. "We may not marry any woman; for with some, marriage is forbidden. Matrimony must not be contracted between parents and their children, as between a father and daughter, a grandfather and his granddaughter, a mother and her son, a grandmother and her grandson; and so on (in a right line) in infinitum. And, if such persons cohabit, they are truly said to have contracted a criminal and incestuous marriage; inasmuch

## TITLE IX.

### OF PATRIA POTESTATE.

Sec. 1a. "Our children, begotten in lawful wedlock, are under our power."

Sec. 1b. "Marriage is a connection between a man and woman, implying a mutual and exclusive consolidation during life."

Sec. 2. "The power which we have over our children is peculiar to the citizens of Rome; for no other people have the same power over their children, which we have over ours."

Sec. 3. "The child of you and your wife, is under your power. The issue of your son and son's wife, that is, your grandsons or granddaughters are equally so as are your great-grandchildren, etc. But children born of a daughter are not in your power, but in the power of their father or grandfather."

## TITLE X.

### OF NUPTIAS.

Sec. 1a. "The citizens of Rome contract valid matrimony, when they follow the precepts of the law: male, when they arrive at puberty, and female, when they attain to a marriageable age. The males, whether native Familiarum, fathers of a family, or filii familiarum; sons of a family: but they are sons of a family, they must first obtain the consent of the parents, under whose power they are. For reason, both natural and civil, convinces us, that the consent of parents should precede marriage; hence arose the question, whether the son of a madman could contract matrimony? But opinions being various, so decided that the son as well as the daughter of a madman, may marry without intervention of the father, provided the rules of our constitution are observed."

Sec. 1. "No one may marry any woman for wife, nor marriage is forbidden. Matrimony must not be contracted between parents and their children, as between a father and daughter, a grandfather and his granddaughter, a mother and her son, a grandmother and her grandson; and so on (in a right line) in infinitum. And, if such persons cohabit, they are truly said to have contracted a criminal and incestuous marriage: inasmuch

as those, who only hold the place of parents and children by adoption, cannot intermarry; and the same law remains even after the adoption is dissolved. You cannot therefore take to wife one who hath been either your adopted daughter or granddaughter, although you may have emancipated her."

Sec. 2. "Matrimony is also prohibited between collaterals, but not so extensively. A brother and sister are forbidden to marry, whether they are the children of the same father and mother, or of either. And if a woman becomes your sister by adoption, so long as that subsists, no marriage may be contracted between you. But, when the adoption is destroyed by emancipation, you may take her to wife. Also, if you should be emancipated, there will then remain no impediment, although your sister by adoption is not so. Hence if a man would adopt his son-in-law, he should first emancipate his daughter, and whoever would adopt his daughter-in-law, should previously emancipate his son."

Sec. 3. "It is unlawful to marry the daughter or granddaughter of a brother, or a sister; although the last are in the fourth degree. For when we are prohibited to take the daughter of any person in marriage, we are also prohibited to take his granddaughter. But it does not appear that there is any impediment against the marriage of a son with the daughter of her, whom his father hath adopted; for they bear no relation to each other, natural or civil."

Sec. 4. "The children of two brothers (Patrueles) or two sisters, (sobrini) or of a brother and sister, (Consobrini) may be joined in matrimony. (Such are cousins.)"

Sec. 5. "A man may not marry his aunt either on the father's or the mother's side, although she is only so by adoption; because they are regarded as representatives of parents. For the same reason no person may marry his great-aunt either on his father's or mother's side."

Sec. 6. "We must abstain from certain marriages, through regard to affinity; as with a wife's daughter, or a son's wife, for they are both in the place of daughters; and this rule must be so understood as to include those who have been, our daughters-in-law. For marriage with a son's wife, while she continues so, is prohibited on another account, viz. because she cannot be the wife of two at the same time. And the marriage of man with his wife's daughter, while her mother continues to be his wife, is also prohibited, because it is unlawful to have two wives at once."

Sec. 7. "A man is forbidden to marry his wife's mother, and his father's wife, because they both hold the place of mothers; and this, although the affinity is dissolved; besides a father's wife, while she continues to be so, may not marry, because no woman can have two husbands at the same time. Nor can a man marry his wife's mother, her daughter continuing his wife, because it is against the law to have two wives."

Sec. 8. "The son of a husband by a former wife, and the daughter of a wife by a former husband, and e contra, (the daughter of an husband by a former wife and the son of a wife by a former husband) may lawfully contract matrimony, even though a brother or sister is born of such second marriage between their respective parents."

Sec. 9. "The daughter of a divorced wife by a second husband, is not daughter-in-law to the first husband. But Julian says we ought to abstain from such nuptials. It is also evident, that the espoused wife of a son, is not a daughter-in-law

Sec. 5. "It is unlawful to marry the daughter or grandaughter of a brother, or a sister; although the last are in the fourth degree, for when an are prohibited to take the daughter of any person in marriage, so are also prohibited to take his granddaughter. But it does not appear that there is any impediment against the marriage of a son with the daughter of her, whom his father doth adopt; for they bear no relation to each other, natural or civil."

Sec. 6. "A man may not marry his wife's either on the father's or the mother's side, although she is only so by adoption; because they are regarded as representatives of parents. For the same reason no person may marry his grandmother either on his father's or mother's side."

Sec. 7. "He must abstain from certain marriages, through regard to affinity; as with a wife's daughter, or a sister's wife, for they are both in the place of daughters; and this rule must be so understood as to include those who have been, but are not now, married; for marriage with a sister's wife, while she continues sister-in-law, is prohibited on another account, viz. because she cannot be, is prohibited on another account, viz. because she cannot be the wife of two at the same time. But the marriage of one with his wife's daughter, while that mother continues to be his wife, is also prohibited, because it is unlawful to have two wives at once."

Sec. 8. "A man is forbidden to marry his wife's mother, and his father's wife, because they both hold the place of mother; and this prohibition, although the affinity is dissolved by the death of the parties, is perpetual."

Sec. 9. "The son of a husband by a former wife, may not marry his wife's mother, for the same reason that he may not marry his mother, because it is unlawful to have two wives at once."

Sec. 10. "The son of a husband by a former wife, may not marry a sister of his father's wife, because they are in the place of mother and father, although the affinity is dissolved by the death of the parties. And if a woman become divorced from her husband, so that neither can marry the other, they are not to intermarry with the sister of a wife by a former husband, or with the daughter of an husband by a former wife, and the wife of a brother or father (husband) may lawfully contract matrimony, even though a brother or sister is heir of such marriage because these relations are not."

Sec. 11. "The daughter of a divorced wife by a second husband, is not incestuous for the first husband. But natural ought to abstain from such marriage. It is also unlawful, that the adjudged wife of a son, in not a daughter-in-law

to his father; and that the espoused wife of a father, is not a stepmother to his son; but it is right to abstain from such nuptials."

Sec. 10. "It is clear that servile cognation is an impediment to matrimony; as when a father and daughter, or a brother and sister, are manumitted."

Sec. 11. "There are other persons also, who, for diverse reasons, may not intermarry; we have caused these to be enumerated in the digests collected from the old law."

Sec. 12. "If persons cohabit in contempt of the rules thus laid down, they shall not be deemed husband and wife, nor shall their marriage, or any portion given on account thereof, be valid; and the children, born in such cohabitation, shall not be under the power of the father. For, in respect to paternal power, they resemble the children of a common woman, who are looked upon as having no father, because it is uncertain who he is. They are therefore called in Latin spurii, and in Greek apatores; i. e. without a father; hence, after the dissolution of such a marriage, no portion, or gift, propter nuptias, can legally be claimed. They who contract such prohibited matrimony, must undergo the farther punishments set forth in our constitutions."

Sec. 13. "It sometimes happens, that children who at their birth were not under the power of their parents, are reduced under it afterwards. Thus a natural son, who is made a Decurion, becomes subject to his father's power; and he who is born of a freewoman, with whom marriage is not prohibited, will likewise become subject to the power of his father, as soon as the marriage instruments are drawn, as our constitution directs; which allows the same benefit to those, who are born before marriage, as to those, who are born subsequent to it."

## TITLE XI.

### DE ADOPTIONIBUS.

Sec. 1a. "It appears from what has been said, not only that all natural (legitimate) children are subject to paternal power, but those also, whom we adopt."

Sec. 1. "Adoption is made two ways, either by imperial rescript or authority of the magistrate. The imperial rescript impowers us to adopt persons of either sex, who are sui juris; (i.e. independent) and this species of adoption is called arrogation. But it is by the authority of the magistrate, that we adopt persons actually under the power of their parents, whether they are in the first degree, as sons and daughters; or in an inferior degree, as grandchildren or great-grandchildren."

Sec. 2. "But now, by our constitution, when the son of a family is given in adoption by his natural father to a stranger, the power of the natural father is not dissolved, neither does anything pass to the adoptive father, nor is the adopted son in his power, although we allow such son, the right of succession to his adoptive father dying intestate. But if a natural father should give his son in adoption, not to a stranger, but to the maternal grandfather of such son; or if a natural father, who

lawyers publishing company inc.

androniqus

has been emancipated, should give his son, begotten after emancipation to his paternal or maternal grandfather or great-grandfather, in this case, the rights of nature and adoption concurring, the power of the adoptive father is established both by natural ties and legal adoption, so that the adopted son would be not only in the family, but under the power of his adoptive father."

Sec. 5. "It is lawful to adopt a person either as a grandson or granddaughter, great-grandson or great-granddaughter, or in a more distant degree, although the adoptor hath no son."

Sec. 10. "Nor can women adopt; for the law does not place even their own children, under their power; but, when death hath deprived them of their children, they may, by the indulgence of the prince, adopt others, as a comfort for their loss."

Sec. 12. "The following answer of Cato was approved of by the ancient lawyers, viz. that slaves, adopted by their masters, obtain freedom by the adoption. Thus instructed, we have ordained, that a slave whom any master nominates to be his son, in the presence of a magistrate, becomes free by such nomination, although it does not convey to him any filial right."

## TITLE XII.

### QUIBUS MODIS JUS PATRIAE POTESTATIS.

### SOLVITUR.

Sec. 1a. "Let us now inquire how persons in subjection to others, can be freed. How slaves obtain their liberty, may be understood from what we have already said in treating of manumission: those who are under the power of a parent, become independent at his death; yet this rule admits of a distinction. When a father dies, his sons and daughters are, without doubt, independent; but, by the death of a grandfather, his grandchildren do not become independent, unless there is an impossibility of their ever falling under the power of their father. Therefore, if their father is alive at the death of their grandfather, in whose power the father was, they then become subject to the power of their father. But, if their father is either dead or emancipated before the death of their grandfather, they then cannot fall under the power of their father, but become independent."

Sec. 1. "If a man, upon conviction of some crime, is deported into an island, he loses the rights of a Roman citizen; and it follows, that the children of a person thus banished cease to be under his power, as if he was naturally dead. And, by parity of reasoning, if a son is deported, he ceases to be under the power of his father. But, if by the indulgence of the prince a criminal is wholly restored, he regains his former condition."

Sec. 6. "Children also cease to be under the power of their parents by emancipation. Emancipation was effected according to our ancient law, either by imaginary sales and intervening manumissions, or by imperial rescript; but it has been our care to reform these ceremonies by an express constitution, so that parents may now have immediate recourse to the proper judge or magistrate, and emancipate their children, grandchildren, etc., of both sexes. And also, by a praetorian edict, the parent is allowed to have the same right in the goods

TITLE XII.

GUIDE RULE AS PATRIAE POTESTATIS.

SOLUTUM.

Sec. 1a. That no one injure how persons in subjection to others, one be freed. How slaves obtain their liberty, may be understood from what we have already said in treating of manumission. Those who are under the power of a parent, become independent at his death; yet this rule admits of a distinction. When a father dies, his sons and daughters who, without doubt, become sui juris, by the death of a grandfather, do not become independent, unless there is an impossibility of their ever falling under the power of their father. Therefore, if their father is alive at the death of their grandfather, in whose power the father was, they become subject to the power of their father. But, if the former father is either dead or emancipated before the death of their grandfather, they then cease fall under the power of their father, but become independent.

Sec. 1. "If a son, upon conviction of some crime, is deported into an island, he loses the rights of a Roman citizen; and it follows, that the children of a person thus banished cease to be under his power, as if he was naturally dead. And, by parity of reasoning, if a son is deported, he ceases to be under the power of his father. But, if by the indulgence of the [illegible] criminal is merely exported, he retains his former condition."

Sec. 2. "Children also cease to be under the power of their parents by emancipation. Emancipation was effected according to our ancient law, either by imaginary sales and fictitious manumissions, or by imperial rescript; but it has been our care to reform these proceedings by an express constitution, so that parents may now have immediate recourse to the proper judge of negligent, and emancipate their children, ungrateful, etc., of both sexes. And also, by a [illegible] child, the parent is allowed to have the same right in the good

of those, whom he emancipates, as a patron has in the goods of his freedman. And farther, if the children emancipated are within age of puberty, the parent, by whom they were emancipated, obtains the right of wardship or tutelage, by the emancipation."

Sec. 7. "A parent having a son under his power, and by that son a grandson or granddaughter, may emancipate his son, and retain his grandson or granddaughter in subjection. He may also emancipate his grandson or granddaughter, and retain his son; or, he may make them all independent. And the same may be said of a great-grandson, or a great-granddaughter."

Sec. 9. "It is necessary to be known, that, if a son's wife hath conceived, and you afterwards emancipate that son or give him in adoption, his wife being pregnant, the child will be born under your paternal authority. But if the conception be subsequent to the emancipation or adoption, the child becomes subject at his birth, either to his emancipated father, or his adoptive grandfather."

Sec. 10. "Children, either natural or adopted, can rarely compel their parents by any method to dismiss them from subjection."

## TITLE XIII.

### DE TUTELIS.

Sec. 3. "Parents may assign tutors by testament to such of their children as are not arrived at puberty, and are under their power. And this privilege extends without exception over sons and daughters. But grandfathers can only give tutors to their grandchildren, when these cannot fall under the power of their father, after the death of their grandfather. Hence, if your son is in your power at the time of your death, your grandchildren by that son cannot receive tutors by your testament, although they were actually in your power; because at your decease they will become subject to their father."

Sec. 4. "As posthumous children are in many cases considered as already born before the death of their fathers; therefore tutors may be given (by testament) as well to a posthumous child, as to a child already born, if such posthumous child, had he been born in the lifetime of his father would have been his proper heir and under his power."

## TITLE XIV.

### QUI TESTAMENTO TUTORES DARI POSSUNT.

Sec. 5. "If a man nominates a tutor for his sons or daughters, the nomination extends to his posthumous issue; because, under the appellation of son or daughter, a posthumous child is comprehended. But, are grandchildren denoted by the word sons? We answer, that under children but not under sons; for son and grandson, differ in signification. But, if a testator assigns a tutor to his descendants, it is evident, that not only his posthumous sons are comprehended, but all his other children."

## TITLE XV.

### DE LEGITIMA AGNATORUM TUTELA.

Sec. 1. "Agnati are those, who are collaterally related to us by males, as a brother by the same father, or the son of a brother, or by him a grandson; also a father's brother, or the son of such brother, or by him a grandson. But those, who are related to us by a female are not agnate, but cognate, bearing only a natural relation to us. Thus the son of a father's sister is related to you not by agnation, but cognation; and you are also related to him by cognation; for the children of a father's sister, follow the family of their father, and not that of their mother."

## TITLE XVII.

### DE LEGITIMA PATRONORUM TUTELA.

Sec. 1a. "By the same law of the twelve tables, the tutelage of freedmen and freedwomen, belongs to their patrons, and to the children of such patrons; and this is tutelage by operation of law, although it exists not nominally in the law; but it is as firmly established by interpretation, as if it had been introduced by express words. For, inasmuch as the law commands, that patrons and their children shall succeed to the inheritance of their freedmen or freedwomen who die intestate, the ancient lawyers were of opinion that tutelage also by implication should belong to patrons and their children. And the law, which calls agnati to the inheritance, commands them to be tutors, because the advantage of succession ought to be attended in most cases with the burden of tutelage. We have said in most cases, because, if a person, not arrived at puberty, is manumitted by a female, she is called to the inheritance, but not to the tutelage."

## TITLE XVIII.

### DE LEGITIMA PARENTUM TUTELA.

Sec. 1a. "Another kind of tutelage termed legal, is received in imitation of parental; for, if a parent emancipate a son, a daughter, a grandson, or a granddaughter, who is the issue of that son, or any others descended from him by males in a right line and not arrived at puberty, then shall such parent be their legal tutor."

## TITLE XIX.

### DE FIDUCIARIA TUTELA.

Sec. 1a. "There is another kind of tutelage called fiduciary; for, if a parent emancipate a son or a daughter, a grandson or a granddaughter, or any other child, not arrived at puberty, he is then their legal tutor; but, at his death, his male children of age become the fiduciary tutors of their own sons, or of a brother, a sister, or of a brother's children

## TITLE XV.

## DE LEGITIMA AGNATORUM TUTELA.

Sec. 1. Persons, who are collaterally related to us by males, as a brother by the same father, or the son of a brother, or by him a grandson; also a father's brother, or the son of such brother, or by him a grandson. But those, who are related to us by a female are not agnate, but cognate, bearing only a natural relation to us. Those the son of a father's sister is related to you not by agnation, but cognation; and you are also related to him by cognation; for the children of a father's sister, follow the family of their father, and not that of their mother."

## TITLE XVI.

## DE LEGITIMA PATRONORUM TUTELA.

Sec. 1a. "By the same law of the twelve tables, the succession of freedmen and freedwomen, belongs to their patrons, and to the children of such patrons; and this is tutelage by operation of law, although it retains not nominally in the law; but it is as firmly established by interpretation, as if it had been introduced by express words. That tutelage as the law regards, that returns to the inheritance that returns and their obligation ceased to the inheritance of their freedmen or freedwomen who die intestate, the nearest relation male of agnate that tutelage also by imitation should [illegible] and the law, which calls [illegible] to the inheritance, commands it to be the future, because regard to the inheritance, commands it to be attended in most cases the advantage of succession ought to be attended in most cases. Besides the burden of tutelage. We have said in most cases, because, if a person, not arrived at puberty, is emancipated by a female, she is called to the inheritance, but not to the tutelage."

## TITLE XVII.

## DE LEGITIMA PARENTUM TUTELA.

Sec. 1a. "Another kind of tutelage termed legal, is perceived by imitation of parents; for, if a parent emancipate a son, a daughter, or a grandson, or a granddaughter, who is the issue of that son, or any others descended from him by males in a right line and not arrived at puberty, then such parent be their legal tutor."

## TITLE XIX.

## DE FIDUCIARIA TUTELA.

Sec. 1a. "There is another kind of tutelage called fiduciary; for, if a parent emancipate a son or a daughter, a grandson or a granddaughter, or any other child, not arrived at puberty, he is then their legal protector, as is both the male children of age become the fiduciary tutors of their sister, or [illegible]. [illegible] of a brother's child[illegible]

emancipated by the deceased. But when a patron, who is a legal tutor, dies, his children also become legal tutors. The reason of which difference is this: a son, although never emancipated, becomes independent at the death of his father; and therefore as he falls not under power of his brothers, he cannot be under their legal tutelage. But the condition of a slave is not altered at the death of his master; for he then becomes a slave to the children of the deceased. None can be called to tutelage. But the condition of a slave is not altered at the death of his master; for he then becomes a slave to the children of the deceased. None can be called to tutelage, unless of full age; and our constitution hath commanded this rule to be generally observed in all tutelages and curations."

## TITLE XX.

## DE ATILIANO TUTORE, ET EO, QUI EX LEGE JULIA ET TITIA DABATUR.

Sec. 3. "But these laws fell into disuse, first when the consuls began to assign tutors to pupils of either sex, on inquisition; and next, when the praetors were invested with the same authority by imperial constitutions. For, by the above mentioned law, no security was required from the tutors for the forthcoming of the property, neither were they compelled to act."

## TITLE XXII.

## QUIBUS MODIS TUTELA FINITUR.

Sec. 1a. "Pupils, both male and female, are freed from tutelage, when they arrive at puberty. The ancients judged of puberty in males, not by years only, but also by the habit of their bodies. But our imperial majesty, regarding the purity of the present times, hath thought it proper, that the same decency, which was ever observed towards females, should be extended also to males; and therefore, by our sacred constitution, we have enacted, that puberty in males should be reputed to commence immediately after the completion of their fourteenth year. But, in relation to females, we leave that wholesome and ancient rule of law unaltered by which they are esteemed marriageable after the twelfth year is completed."

Sec. 1. "Tutelage is determined before puberty, if the pupil is either arrogated, or suffers deportation, or is reduced to slavery, or becomes a captive."

Sec. 2. "But, if a testamentary tutor is given upon a certain condition, when that condition is filled, the tutelage ceases."

Sec. 3. "Tutelage ends also by death of the tutor, or the pupil."

Sec. 4. "When a tutor under the greater diminution of state, loses his liberty and his citizenship, his tutelage is extinguished. But, if the least diminution only is suffered,

## TITLE XX.

### IN ATHLIAE MITIUS, ET NO. QUI EX LUDE TUTIA

### AT TITIA TARATUR.

Sec. 1. "But those laws fail to ensure, first when the [illegible] the commons began to assign tutelage to pupils of either sex, on inquisition and oath, when the praetors were invested with [illegible] of tutors by imperial constitutions. For, by the same authority by imperial constitutions. For, by the [illegible] active annotated law, as security was required from the tutors for the furnishing of the property, neither were they compelled to act."

## TITLE XXII.

### WHOSE MOTHER GUIDES PUPILLUS.

Sec. 1a. "Pupilla, both male and female, are freed from tutelage, when they arrive at puberty. The ancients judged of puberty in males, not by years only, but also by the habit of their bodies. But our Imperial majesty, regarding the purity of the present times, both thought it proper, that the same [illegible] with the ever improved [illegible] should be [illegible] also to males and therefore, by our sacred constitution, we have enacted, that puberty in males should be reckoned marriageable after the twelfth year is completed."

Sec. 1. "Tutelage is determined before puberty, if the ward is either arrested, or suffers deportation, or is reduced to slavery, or becomes a captive."

Sec. 2. "But, if a testamentary tutor is given upon a certain condition, when that condition is filled, the tutelage ceases."

Sec. 3. "Tutelage ends also by death of the tutor, or the pupil."

Sec. 4. "When a tutor under the proper limitation of [illegible] loses his liberty and his attendants, his tutelage is [illegible]. But, if the later diminution only is suffered,

as when a tutor gives himself in arrogation, then no species of tutelage is extinguished, but the legal. But every diminution of state in pupils, takes away all tutelage."

Sec. 5. "These, who are testamentary tutors for a term only, are discharged at the expiration of such term."

Sec. 6. "They also cease to be tutors, who are removed on suspicion; or excuse and exempt themselves from the burden of tutelage for just reason; of which hereafter."

## TITLE XXIII.

### DE CURATORIBUS.

Sec. 1a. "Males arrived at puberty, and females marriageable, do nevertheless receive curators, until they have completed their twenty-fifth year; for, they are not yet of an age to take proper care of their own affairs."

Sec. 2. "No adults can be obliged to receive curators, unless ad litem; for a curator may be appointed to any special purpose."

Sec. 4. "Persons deprived of their intellects, deaf, mute, or subject to any continual disorder, since they are unable to manage their own affairs, must be placed under curators."

Sec. 5. "Sometimes even pupils receive curators; as when the legal tutor is unqualified; for a tutor must not be given to him, who already has a tutor. Also, if a tutor by testament, or appointed by a practor, or the governor of a province, appears afterwards incapable of executing his trust, it is usual, although he is guilty of no fraud, to appoint a curator to be joined with him. It is also usual to assign curators in the place of tutors excused for a time only."

## TITLE XXV.

### DE EXCUSATIONIBUS TUTORUM VEL CURATORUM.

Sec. 1a. "Persons, nominated as tutors, or curators, may, upon diverse accounts, excuse themselves; generally as having children, whether subject, or emancipated. For at Rome, if a man has three children living, in Italy, four, or in the Provinces, five, he may therefore be excused from tutelage and curation, as well as from other employments of a public nature; for both tutelage and curation are esteemed public offices. But adopted children will not avail the adopter; they will nevertheless excuse their natural father, who gave them in adoption. Also grandchildren by a son, when they succeed in place of their father, will excuse their grandfather; but grandchildren by a daughter will not. Those children only, who are living, can excuse from tutelage and curation; the deceased are of no avail; should it be asked if a parent can count upon sons, destroyed in war? We must answer, he can avail himself of those only, who perish in battle; for those who have fallen for the republic, are esteemed to live in the immortality of their fame."

## TITLE XXIII.

### DE CURATORIBUS.

Sec. 1a. "When arrived at puberty, and females marriageable, do nevertheless receive curators, until they have completed their twenty-fifth year, they are not free of an age to take proper care of their own affairs."

Sec. 2. "No minor can be obliged to receive curators, unless an item for a curator may be appointed to any special purpose."

Sec. 3. "Persons deprived of their intellects, deaf, mute, and [illegible] receive curators, since they are unable to manage their own affairs, must be placed under curators."

Sec. 5. "Sometimes even females receive curators; as when the legal tutor is unqualified; for a tutor must not be given to him, who already has a tutor. Also, if a tutor by testament, or appointed by a magistr, or the governor of a province, appears afterwards incapable of executing his trust, it is usual. although he is guilty of no fraud, to appoint a curator to be joined with him. It is also usual to assign curators in the place of tutors removed for a time only."

## TITLE XXV.

### DE SUBSTITUTIONIBUS PUPILLARIBUS VEL CURATORIBUS.

Sec. 1a. "Persons, nominated as tutors, or curators, may, when elevated accounts, excuse themselves; generally as their children, whether subject, or emancipated. For as Bone, if a man has three children living, in Italy, four, or in the provinces, five, he may therefore be excused from tutelage and curation, as well as from other employments of a public nature; for both tutelage and curation are reckoned public offices."

But adopted children will not avail the adopter; they will nevertheless excuse their natural father, who gave them in adoption. Also grandchildren by a son, when they succeed in place of their father, will excuse their grandfather; but grandchildren by a daughter will not. Those children only, who are living, can excuse from tutelage and curation; the deceased are of no avail; should it be made it a result that court upon some, destroyed in war, he must answer, be only afraid himself of those only, who perish in battle; for those who have fallen for the republic are entombed to live in the immortality of their fame."

Sec. 19. "The same emperers have enacted, that a husband may excuse himself from being curator to his wife, even after he hath begun to act."

## TITLE XXVI.

### DE SUSPECTIS TUTORIBUS VEL CURATORIBUS.

Sec. 3. "Let us then inquire, by whom suspected persons may be accused. Now an accusation of this sort is of a public nature, and open to all. For, by a rescript of the emperors Severus and Antoninus, even women are admitted to be accusers; yet such only, as are induced by their duty, or by their relation to the minor; thus a mother, a nurse, a grandmother, or a sister, may become accusers. But the praetor can at discretion admit any women, who acting with becoming modesty, but impatient of wrongs offered to pupils, appears to have no other motive, than to relieve the injured."

Sec. 4. "No pupil can bring an accusation of suspicion against his tutor; but adults, by the rescript of Severus and Antoninus, are permitted, when they act by advice of persons related to them, to accuse their curators. (Prochein Ami.)"

## BOOK II.

## TITLE V.

### DE USU ET HATITATIONE.

Sec. 2. "He, who hath but the use of an house, is understood to have no other right than that of personal habitation; for he cannot transfer this right; and it is hardly thought allowable to receive a guest or a lodger. But he may inhabit the house with his wife, children, freedmen, and such other free persons as are servants. And agreeably to this, if the use of a house appertains to a woman, she may live in it with her husband, and her dependants."

## TITLE VI.

### DE USUCAPIONIBUS ET LONGI TEMPORIS PRESCRIPTIONIBUS.

Sec. 2. "No prescription lies for things that have been stolen; or seized by violence; although they have been possessed bona fide, during the length of time required by our constitution; for prescription to things stolen is prohibited by a law of the twelve tables, and by the law Atilia; and the laws Julia and Plautia forbid a prescription to things seized by violence. And it is not to be inferred from these laws, that a thief, or disseizor only, is prohibited from taking by prescription; (for such are also prohibited because they are fraudulent possessors;) but all others likewise; although they

BOOK II.

TITLE V.

IN USU ET RELIGIONE.

Sec. 5. "He, who both has the use of an house, is understood to have no other right than that of personal habitation; for he cannot transfer that right; nor is it lawful though allowable to receive a rent for a lodger. But he may handle the money with his wife, children, freedmen, and such other free persons as are part of a woman, who may live in it with her husband, and her descendants."

TITLE VI.

IN USUCAPIONIBUS ET LONGI TEMPORIS PRAESCRIPTIONIBUS.

Sec. 1. "No prescription can bring that to pass, which is not lawful by violence; although they have been possessed from time to time during the terms of time required by our constitution; or transmitted to others by the Perpetual Edict or a law of the twelve tables, and by the Aquilian and Lex Julia and Plautia forbid a retention to stand seized by violence. And it is not to be inferred from these laws, that a thief, or disseizor only, is prohibited from them by prescription (for such are also prohibited because they are prohibited notoriously) but all others likewise although they

shall have purchased such things bona fide, or otherwise fairly received them; hence things moveable cannot easily be prescribed to, even by honest possessors; for whoever hath knowingly sold or transferred the goods of another upon whatever consideration, is guilty of theft. But this rule admits of some cases wherein a moveable may be prescribed to: thus if an heir, supposing a particular thing to be hereditary, which in reality had only been lent, let to, or deposited with the deceased, shall have sold, bestowed, or given it as a portion, the bona fide receiver may no doubt prescribe; for this can never be reputed stolen, inasmuch as the heir, who alienated it, believing it his own, committed no theft. So if he, who hath the usufruct of a female slave, sell or give away her child believing it to be his property, he does not commit theft; for theft implies an intention to commit it. It may also happen, by various means, that one man may transfer the property of another without theft, and give a right of prescription to the possessor. As to things immoveable the law ordains, that, if any man should take possession of an estate without force, by reason either of the absence, or negligence of the owner, or because he died without heirs, and (although he hath thus possessed the land dishonestly) shall have made livery of it to another, who took it bona fide, the land by long possession may be acquired by such taker, who took neither a thing stolen, or seized, by violence; for the opinion of those ancient lawyers, who held, that lands and things immoveable, might be stolen, is now abolished; and it is provided by the imperial constitutions, in favour of those who possess immoveable property, that a long and undoubted possession ought not to be taken away."

## TITLE VIII.

## QUIBUS ALIENARE LICET, VEL NON LICET.

Sec. 1a. "Sometimes the proprietor of a thing may not alien it, while one who is not proprietor, may, for example, by the law Julia, a husband is forbidden to alienate lands, which came to him in right of his wife, without her consent; although given to him, as a marriage portion. But, in this respect, we have corrected and amended the law Julia; for, as this law regards only possessions situated in Italy, and although it inhibits the husband to mortgage such possessions, even with the consent of his wife, yet it permits him, with her consent to alienate, we have provided a remedy for both cases; so that now, no husband can alien or mortgage, even with consent of his wife, any property provincial or Italian, obtained with her, as a marriage portion; lest the frailty of women should occasion the ruin of their fortunes."

Sec. 2. "It must now be observed, that no pupil, male nor female, can alien anything without the authority of a tutor; and therefore, if a pupil, without such authority lend money to any man, the pupil acquires no obligation; for he cannot vest in the receiver the property of the money, which may be claimed by vindication, if it still exist. But if money, lent by a minor, be consumed by the borrower, bona fide, (i.e. believing the lender was of full age) it may be recovered from such borrower by condiction; if mala fide, an action ad exhibendum will lie against him."

Sec. 3. "On the contrary, property may be transferred to pupils, male or female, without the authority of their tutors; yet, if a debtor make payment to a pupil, he should be warranted by the authority of the tutor, otherwise he will not be acquitted of the debt;

## TITLE VIII.

### GUIDE-BOOKS FOR, AND MEN FOR GUIDE.

Sec. 1. "Sometimes the proprietor of a thing may not alienate it, while one who is not proprietor, may, for example, by the law of a state without forfeiture to alienate lands, which cease to him in right of his wife, without her consent although given to him as a marriage portion. But, in this respect, we have corrected and amended the law Julian for, as this law regards only possessions situated in Italy, and although it inhibits the husband to mortgage such possessions, even with the consent of his wife, yet it permits him, with her consent to alienate." We have provided a remedy for such cases that none things cannot easily be prescribed to, even by honest possessors; for whoever fairly and honestly sold or transferred the goods of another upon whatever consideration, is guilty of theft." But this rule admits of none cases wherein a moveable may be prescribed for: thus if an heir, supposing a particular thing to be hereditary, which in reality had only been lent, let to, or deposited with the deceased, shall have sold, bestowed, or given it as portion, the sons like receiver may no doubt prescribed for this thing, which never be reputed stolen, inasmuch as the heir, who supposed it, failsafe is his own, consisted no theft. So if he, who took the usufruct of a female slave, sell or give away for short time, and also a right of perception to the possessor. As to things innovable the law ordains, that, if any can should take possession of an estate without force, by person either of the absence, or negligence of the owner, or because he died without heirs, and (although he both thus possessed the land diuturnally) shall have sued thereof to another, who took it from him, the land by long prescription may be acquired by such taker, who took putting a thing innovable by violence for the opinion of those mention stolen, or seized, that lands and things innovable, might be stolen, who hold, that lands and things innovable by the imperial constitutions, is not disputed and it is provided in favour of those who possess innovable property, that a long and continued possession would not to be taken away."

## TITLE VIII.

### GUIDE-BOOKS FOR, AND MEN FOR GUIDE.

Sec. 1. "Sometimes the proprietor of a thing may not alienate it, while one who is not proprietor, may, for example, by the law of a state without forfeiture to alienate lands, which cease to him in right of his wife, without her consent although given to him as a marriage portion. But, in this respect, we have corrected and amended the law Julian for, as this law regards only possessions situated in Italy, and although it inhibits the husband to mortgage such possessions, even with the consent of his wife, yet it permits him, with her consent to alienate." We have provided a remedy for such cases that none things cannot easily be prescribed to, even by honest possessors; for whoever fairly and honestly sold or transferred the goods of another upon whatever consideration, is guilty of theft." But this rule admits of none cases wherein a moveable may be prescribed for: thus if an heir, supposing a particular thing to be hereditary, which in reality had only been lent, let to, or deposited with the deceased, shall have sold, bestowed, or given it as portion, the sons like receiver may no doubt prescribed for this thing, which never be reputed stolen, inasmuch as the heir, who supposed it, failsafe is his own, consisted no theft. So if he, who took the usufruct of a female slave, sell or give away for short time, and also a right of perception to the possessor. As to things innovable the law ordains, that, if any can should take possession of an estate without force, by person either of the absence, or negligence of the owner, or because he died without heirs, and (although he both thus possessed the land diuturnally) shall have sued thereof to another, who took it from him, the land by long prescription may be acquired by such taker, who took putting a thing innovable by violence for the opinion of those mention stolen, or seized, that lands and things innovable, might be stolen, who hold, that lands and things innovable by the imperial constitutions, is not disputed and it is provided in favour of those who possess innovable property, that a long and continued possession would not to be taken away."

and this, for an evident reason, was ordained by a constitution, which we promulged to the advocates of Caesarea, at the suggestion of that most eminent man Tribonian, the questor of our sacred palace; whereby it is enacted, that the debtor of a minor may pay over to the tutor or curator, under a judicial decree, permitting the payment previously obtained without expense to the minor; for when the debt is paid under the decree of a judge, it is attended with the fullest security. But, although money hath been paid to a pupil, otherwise than we have ordained, yet, if he be really enriched by the payment, and hath preserved the money, and should afterwards require, that it should be repaid he might be barred by an exception of fraud. But, if the pupil hath squandered the money, or lost it by theft or violence, an exception of fraud will be of no benefit to the debtor, who will be compelled to make a second payment; because the first was made inconsiderately without the authority of the tutor, and not according to our ordinance. Pupils may not pay money without the authority of their tutors; it does not vest as the property of the receiver; for without such authority a pupil can alien nothing."

## TITLE IX.

### PER QUAS PERSONAS CUIQUE ACQUIRITUR.

Sec. 1. "Anciently, whatever came to children, male or female, under power of their parents, was acquired for the parents without any distinction, if we except the peculium castrense; and this so absolutely, that what was acquired by one child, the parent might have given to another, or to a stranger; or sold it, or applied it in what manner he thought proper: this seemed to be inhuman; and we have therefore, by a general constitution, mitigated the law as it respects children, and at the same time, supported that honour, which is due to parents; having ordained, that, if anything accrue to the son by means of the father's fortune, the whole shall be acquired for the father, according to ancient practice; (for can it be unjust, that the wealth, which the son hath obtained, by means of the father, should revert to the father?) but that the acquisitions of the son by any other means shall remain in the son; and that the father shall be entitled only to the usufruct of such acquisition; lest that which hath accrued from his labour or good fortune, being transferred to another should affect him as a hardship."

## TITLE X.

### DE TESTAMENTIS ORDINANDIS.

Sec. 6. "Those persons are good witnesses, who can legally take by testament; but no woman or minor under puberty or slave; no person, mad, mute, or deaf; no interdicted prodigal; nor any whom the laws, have reprobated and rendered intestable, can be admitted a witness to a testament."

TITLE IX.

PAR CHAP. CONCERNING CIVIL ACQUISITION.

Sec. 1. "Absolutely, whatever come to children, sold or fraudulently acquired by their parents, was acquired for the private rights under power of their parents, and acquisition continues and this no way dissolution. If we accept the peculiar contravenes and this no absolutely, that what was acquired by one child, the parent might have given to another, or to a stranger; or sold it, or applied it in what manner he thought proper. This second to be inherent and which is due to parental bonding ordained, that, if capricious decree it necessary children, and at the same time, supported that honour, so many therefore, by a general constitution, militated the law as to the ban by means of the father's fortune, the whole shall be assumed for the latter, accordingly to ancient precept (for can it be unjust, that the wealth, which the son hath obtained, by means of the father, should revert to the father?) but that the acquisitions of the son by any other means shall remain in the sort and that the father shall be entitled only to the usufruct of such acquisitions, lest that which hath accrued from his labour or good fortune, being transferred to another should affect him as a hardship."

TITLE X.

DE TESTAMENTIS CONDENDIS.

Sec. 1. "Those persons are good witnesses, who can legally take by testament, [illegible] to whom or minor under tutelary or curatory [illegible] to person, mad, mute, or deaf; an interdicted prodigal nor any who the law, have reformated and rendered intestable, can be admitted a witness to a testament."

## TITLE XIII.

### DE EXHAEREDATIONE LIBERORUM.

Sec. 1a. "The solemnities of law, before explained, are not alone sufficient to make a testament valid. For he who has a son under his power, should take care either to institute him his heir, or to disinherit him by name; for if he pass over his son in silence, the testament will have no effect. And even if the son die leaving the father, yet no one can take upon himself the heirship by virtue of such a testament, inasmuch as it was null from the beginning. But the ancients did not observe this rule in regard to daughters and grandchildren of either sex, though descended from the male line; for although these were neither instituted heirs, nor disinherited, yet the testament was not invalidated; because a right of accretion entitled them to a certain portion of the inheritance: parents were therefore not necessitated to disinherit these children nominally, but might do it inter caeteros. A child is nominally disinherited, if the words of the will are, 'Let Titius my son be disinherited'; or even thus, 'Let my son be disinherited,' without the addition of a proper name, provided the testator had no other son living."

Sec. 1. "Also posthumous children should either be instituted heirs, or disinherited; and in this the condition of all children is equal; but, if a posthumous son, or any posthumous descendant in the right line, male or female, be pretermitted, the testament will nevertheless be valid at the time of making it; but, by the subsequent birth of a child of either sex, it will be annulled. And therefore, if a woman from whom a posthumous child is expected, should miscarry, nothing can prevent the written heirs from entering upon the inheritance. But posthumous females may be either nominally disinherited, or enter caeteres by a general clause; yet, if disinherited inter caeteros, something must be left them to show they were not omitted through forgetfulness. But male posthumous children, i.e. sons, and their descendants in the direct line, cannot be disinherited otherwise, than nominally in this form; 'whatever son is hereafter born to me, I disinherit him.'"

Sec. 2. "Those are reckoned in the place of posthumous children, who, succeeding in the stead of proper heirs, become by agnation, or quasi-birth, proper heirs to their parents: thus, if Titius have a son under his power, and by him a grandson, or granddaughter, then would the son, because he is first in degree, have the sole right of a proper heir, although the grandson, or granddaughter by that son, is under the same parental power. But, if the son of Titius should die in his father's lifetime, or should by any other means cease to be under his father's power, the grandson or granddaughter would succeed in his place; and would thus by what may be called a quasi-birth obtain the right of a proper heir. Therefore, as it behoves a testator for his own security, either to institute or disinherit his sons, lest his testament should be annulled, so it is equally necessary for him either to institute or disinherit his grandson or granddaughter by that son, lest, if his son should die in his (the testator's) lifetime, his grandson or granddaughter, succeeding to the place of his son, should make void his testament by quasi-agnation. This has been introduced by the law Julia Velleia, in which is set forth a form of disinheriting quasi-posthumous, like that of posthumous children."

Sec. 3. "The civil law does not make it necessary, either to institute emancipated children heirs, or to disinherit them in a testament; inasmuch as they are not sui haeredes, i.e. proper heirs.

law publishing company inc.

## [illegible]

Sec. 1a. "The solemnities of law, before explained, are not also sufficient to make a testament valid. For he who has [illegible] under his power, should take care either to institute his sons [illegible] or to disinherit him by name for it be pass over his son in silence, the testament will have no effect. And even if the son [illegible] the father, yet he one can take upon himself the burthen [illegible] of such a testament, inasmuch as it was null from the beginning and the ancients did not observe this rule in regard to daughters and grandchildren of either sex, though descended from the male line by [illegible] although these were neither instituted heirs, nor disinherited, yet the testament was not invalidated; because a right of accretion obtained them to a certain portion of the inheritance. Persons were therefore not necessitated to disinherit them ordinarily, but might do it in later centuries. A child is ordinarily disinherited, if the words of the will are, 'Let Titius my son be disinherited,' without the addition of a proper name, [illegible] the testator had no other son living."

Sec. 1. "Also posthumous children should either be instituted heirs, or disinherited; and in this the condition of all children is equal; but, if a posthumous son, or any posthumous descendant in the right line, male or female, be pretermitted, the testament will nevertheless be void at the time of making it not, by the subsequent birth of a child of either sex, it will be annulled. And therefore, if a woman from whom a posthumous child is expected, should miscarry, nothing [illegible] the writing being from entering upon the inheritance. But posthumous females may be either ordinarily disinherited, or after centuries by a general clause; but, if they were not omitted through forgetfulness. But male posthumous children, i.e. sons, and [illegible] must be left than to whom they were not omitted [illegible] for it."

Sec. 2. "There are required in the piece of posthumous children, or grandchildren in the stead of proper heirs, persons by succession, [illegible] proper heirs to their parent. Time, if Titius have a son under his power, and by him a grandson, or granddaughter, born would the son, because he is first in degree, have the sole right of a proper heir, although the grandson or granddaughter by that son, in under the same parental power. But, if the son of Titius should die in his father's lifetime, or should by any other means cease to be under his father's power, the grandson or granddaughter would succeed in his place and would then by what may be called a quasi right obtain the right of a proper heir. Therefore, as it behoves a testator for his own security, either to institute or disinherit his sons, lest his testament should be annulled, so it is equally necessary for him either to institute or disinherit his grandson or [illegible] after his son, lest, if his son should die in his (the testator's) lifetime, his grandson or granddaughter, succeeding to the place of his son, should make void his testament by usual operation. This has been introduced by the lex Julia Vallaia, in what is not [illegible] form a form of disinherited quasi-posthumous, like that of posthumous children."

Sec. 3. "The civil law does not make it necessary, either to institute emancipated children heirs, or to disinherit them in a testament inasmuch as they are not sui heredes, i.e. proper heirs.

But the praetor ordains, that all children male or female, if they be not instituted heirs, shall be disinherited; the males nominally; the females inter caeteros; for, if children have neither been instituted heirs, nor properly disinherited in manner before mentioned, the praetor gives them possession of the goods, contrary to the testament."

Sec. 4. "Adopted children, while under the power of their adoptive father, are entitled to the rights of children born in lawful matrimony; and therefore they must either be instituted heirs, or disinherited, according to the rules laid down respecting natural (legitimate) children. But neither by the civil law, nor by praetorian equity, are children emancipated by an adoptive father, numbered among his natural or legitimate children, so as to partake of their rights: hence adopted children, while in adoption, are reputed strangers to their natural parents, who need not institute them heirs, or disinherit them; but, when emancipated by their adoptive father, they are in the same state, in which they would have been, if emancipated by their natural father."

Sec. 5. "These were the rules of old times. But we (not thinking, that any distinction can reasonably be made between the two sexes, inasmuch as they equally contribute to the procreation of the species, and because, by the ancient law of the twelve tables, all children, were equally called to the succession ab intestato, which law the praetors seem afterwards to have followed) have by our constitution introduced the same law both as to sons and daughters, and also to all other descendants in the male line, whether in being, or posthumous: so that all children whether they are proper heirs or emancipated, must either be instituted heirs or disinherited by name; and they possess the same influence as to avoiding the testament of the parent, and destroying the heirship, as the legitimate or emancipated children have, whether appointed as living or as posthumous children. In respect of adopted children, we have introduced certain regulations, which are contained in our constitution of adoptions."

Sec. 7. "Neither a mother, nor a grandfather on the mother's side, need expressly institute their children heirs, or disinherit them, but may pass them by in silence; for the silence of a mother, a maternal grandfather, and of all other ascendants on the mother's side, is equivalent to an actual disinherison by a father. For a mother is not obliged to disinherit her children, if she does not think proper to institute them her heirs: neither is a maternal grandfather under a necessity of instituting nor of disinheriting his grandson or granddaughter by a daughter; inasmuch as this is not required either by the civil law, or the edict of the praetor, which gives possession of goods contrary to the testament, to those children, who have been passed over in silence. But children, in this case, are not without remedy against the testament of their mother or maternal grandfather, which shall be shewn hereafter."

## TITLE XIV.

### DE HAEREDIBUS INSTITUENDIS.

Sec. 1a. "A man may appoint slaves, as well as freemen, to be his heirs by testament; and may nominate the slaves of another as well as his own; yet, according to the opinion of many, no master could formerly make his own slaves his heirs, without freeing them: but, at present, by our constitution, masters may do this: which we have

introduced, not for the sake of innovation, but because it seemed most just; and because Paulus, in his commentaries upon Sabinus and Plautius, affirms, that this was also the opinion of Atilicinus. We call a slave proprius servus, if the testator had only a naked property in him, the usufruct being in another. But, in a constitution of the emperors Saverus and Antoninus, there is a case, in which a slave was not permitted to be instituted heir by his owner, although his liberty was expressly given to him. The words are—'It is consonant to right reason, that no slave, accused of adultery with his mistress, shall be allowed, before a sentence of acquital, to be made free by that mistress, who is alleged to be a partner in the crime.' Hence, if a mistress institute such a slave to be her heir, it is of no avail. Alienus servus is one of whom the testator had only the usufruct."

## TITLE XVI.

## DE PUPILLARI SUBSTITUTIONE.

Sec. 1a. "A parent can substitute to his children, within puberty, and under his power, not only in manner before-mentioned, as, 'If my children will not, let some other person be my heir'; but he may write, 'If my children become my heirs, but die within puberty, let another become their heir'; for example, 'Let Titius, my son, be my heir; and, if he should refuse, or if accepting, he should die before he ceases to be under tutelage, (i.e. before he arrives at puberty,) let Seius be my heir.' In this case, if the son do not enter upon the inheritance, or, if taking the inheritance, he dies a pupil before puberty, the substitute is then heir to the son. For custom has ordained, that parents may make wills for their children, who are not of age to make wills for themselves."

Sec. 4. "Parents may not only substitute to their children within puberty, if such children become their heirs, and die within puberty; but they may substitute to their disinherited children; and therefore, whatever a disinherited child, within the age of puberty, may have acquired by inheritance, by legacies, or by the gifts of relations and friends, the whole will become the property of the substitute. All we have said concerning the substitution of pupils, instituted heirs, or disinherited children, is understood to extend also to posthumous children."

Sec. 5. "No parent can make a testament for his children, unless he hath made a testament for himself; for the pupillary testament is a part and consequence of the testament of the parent, insomuch that, if the testament of the father be not valid, neither will that of the son."

Sec. 6. "A parent may make a pupillary substitution to each of his children, or to him who shall die the last within puberty. To each, if he be unwilling, that any of them should die intestate; to the last who shall die within puberty, if he wish that they should preserve among them the entire right of succession."

Sec. 8. "A pupillary substitution may be made to males, until they reach fourteen; and to females, until they have completed their twelfth year; after which the substitution becomes extinct."

androniscus

## TITLE XVIII.

### DE INOFFICIOSO TESTAMENTO.

Sec. 1a. "Since parents often disinherit their children without cause, or omit to mention them in their testaments, it has therefore been introduced, that children, who have been unjustly disinherited, or omitted, may complain that such testaments are inofficious, under colour; that their parents were not of sane mind, when they made them: not that the testator was really insane, for the testament may have been well made; but that it is not consistent with the duty of a parent. For, if a testator were really insane at the time, his testament is null."

Sec. 1. "Not children only are allowed to complain that testaments are inofficious; for parents are permitted to do the same. Also, the brothers and sisters of a testator, by the imperial constitutions, are preferred to infamous persons, if any such have been instituted heirs; but they are not therefore allowed to complain against any heir. Collaterals, beyond brothers and sisters, cannot sustain a complaint in this respect or succeed for themselves, (but though their right of complaining be not disputed, and the testament be annulled, yet those only can be benefited, who are the nearest in succession upon an intestacy.)"

Sec. 2. "Adopted as well as natural children, according to our constitution, are admitted to complain against a testament as inofficious, if they can obtain the effects of the deceased no other way; but if they can obtain the whole or a part of the inheritance by any other means, they cannot pursue this remedy. Posthumous children also, who are unable to recover their inheritance by any other method, are allowed to urge this complaint."

Sec. 6. "No person, entitled to a fourth can be barred from bringing a complaint (de inofficioso) of undutifulness, unless he hath received it either by being appointed heir, by having a legacy, or by means of a trust for his use; or unless his legal part hath been given him by donation mortis causa or inter vivos, (in those cases, noticed by our constitution) or by any other means set forth in our ordinances. What we have said of the fourth or legal portion, is to be so understood, that, if there be more persons than one, who have a right to bring a plaint of undutifulness against a testament, yet one-fourth will be sufficient, divided among them all in equal portions."

## TITLE XIX.

### DE HAEREUM QUALITATE ET DIFFERENTIA.

Sec. 2. "Proper and necessary heirs, are sons, daughters, grandsons, or granddaughters by a son or other direct descendants, in the power of the deceased at the time of his death. To constitute grandchildren proper heirs, it does not suffice, that they were in the power of their grandfather at the time of his decease; but it is requisite, that their father should have ceased to be a proper heir in the lifetime of his father, by having been freed, either by death or otherwise from paternal authority; for then it is, that the grandson or granddaughter succeeds in place of their father. Heirs are called sui or proper, because they are domestic; and in the very lifetime of their father are reputed masters in a certain degree. Hence the

children of an intestate are first in succession; and are called necessary heirs, because, willing or unwilling they become the heirs of their parent according to the law of the 12 tables, whether under a testament or an intestacy. But when children request it, the praetor permits them to obtain from the inheritance, that the effects of their parents, rather than their own, may be seized by the creditors."

Sec. 3. "All other heirs, not subject to the power of the testator, are called strangers: thus, children not under the power of their father, but who are constituted his heirs, are strangers in a legal sense; and so are children instituted heirs by their mother, for a woman is not allowed to have her children under her own power. A slave also, whom his master hath instituted by testament and afterwards manumitted is so accounted."

## TITLE XX.

## DE LEGATIS.

Sec. 15. "If a man bequeath to his wife her marriage portion, it is valid; for the legacy is more beneficial than the action she might maintain for the recovery of her portion. But, if he bequeath to his wife, her marriage portion, never actually received, the emperors Severus and Antoninus have declared by their rescript that if it be left simply without any specification of a sum certain, the legacy is void; but if any sum or thing be specified, or if the instruments, in which the exact value of the portion is mentioned, be referred to, the legacy is valid."

Sec. 17. "If a testator bequeath his female slaves and their offspring, although the slaves die, their issue becomes due to the legatee; and so, if ordinary slaves are bequeathed together with vicarial; for although the ordinary slaves die, yet the vicarial slaves will pass by virtue of the request. But, where a slave is bequeathed with his peculium, and afterwards dies, or is manumitted, or alienated, the legacy of the peculium becomes extinct. The consequences will be the same, if a piece of ground is bequeathed with the instruments for improving it; for, if the testator aliens the ground, the legacy of the instruments of husbandry is of course extinguished."

Sec. 25. "It was not permitted formerly, that either legacies, or gifts in trust, should be bequeathed to incertain persons; this was even prohibited to a soldier, by the emperor Adrian. An incertain person is one whom the testator has figured in his imagination, without any determinate knowledge; as if he should say: 'Whoever shall give his daughter in marriage to my son, to that person let my heir deliver up such a piece of ground.' And, if he had made a bequest to the first consuls appointed after his testament was written, this also would have been a bequest to incertain persons; and there are ther similar examples. Freedom likewise could not be conferred upon an incertain person; for it was necessary, that all slaves should be nominally infranchised; but a legacy might have been given to an incertain person under a certain demonstration; or, in other words, to an incertain person, being one of a number of persons certain; as, 'I direct my heir to give such a thing to any one of my present collateral relations, who shall take my daughter in marriage.' But, if a legacy or fiduciary gift had been paid to incertain persons by mistake, it was provided by the constitutions, that such persons were not compellable to refund."

children of an intestate are first in succession and are called
to succeed before, because, willing or unwilling they become the
of their parent according to the law of the 12 tables; whether under
a testament or an intestacy. But when children request it, the
praetor permits them to obtain from the inheritance, that the effects
of their parents, rather than their own, may be seized by the credi-
tors."

Sec. 2. "All other heirs, not subject to the power of the
testator, are called successors then, whether not under the power
of their father, but who are constituted his heirs by their mother,
a legal decent and so are children instituted heirs by their mother,
for a degree is not allowed to have her children under her own power.
A slave also, when his master has instituted by testament and after-
wards manumitted is so accustomed."

## TITLE XX.

### DE LEGATIS.

Sec. 1. "If a man bequeath to his wife her marriage portion,
it is valid for the legacy is more beneficial than the action she
might maintain for the recovery of her portion. But, if he bequeath
to his wife, her marriage portion, never actually received, the
[illegible] Sabrius Proculus and Antistius Labo declared by their respect-
[illegible] and specification of a sum certain, the
[illegible] legacy is void if any one thing be specified, or if the
statement, in which the exact value of the portion is mentioned, is
referred to, the legacy is valid."

Sec. 12. "If a testator bequeath his female slaves and their
offspring, although the slaves die, their issue become due to the
legatee and so, if ordinary slaves are bequeathed together with
[illegible] for although the ordinary slaves die, yet the vicarial
slaves will pass by virtue of the request. But, where a slave is
bequeathed with his peculium, and afterwards dies, or is manumitted,
or alienated, the legacy of the peculium ceases entirely. The bequest
passes with he, the same, if a piece of ground is bequeathed with
the instruments for improving it; for, if the testator alienate the
ground, the legacy of the instruments of husbandry is of course
extinguished."

Sec. 20. "It was not permitted formerly, that either legacies
or gifts in trust, should be bequeathed to incertain persons; this
was even prohibited to a soldier, by the emperor Adrian. An in-
certain person is one whom the testator has figured in his imagina-
tion, without any determinate knowledge as if he should say 'Who-
ever shall give his daughter in marriage to my son, to that person
let my heir deliver my mead a piece of ground.' And, if he had
made a bequest to the first consule appointed after his testament
was written, this also would have been a bequest to incertain persons
and there are other similar examples. Trebon Ulpianus could not to
observed upon an incertain person for it was necessary, that all
slaves should be nominally intermediate; but a legacy might have been
given to an incertain person, being one of a number of persons
certainly so, 'I direct my heir to give such a thing to any one of
my present collateral relations, who shall take my daughter in mar-
riage.' But, if a legacy or fiduciary gift had been paid to incertain
persons by mistake, it was provided by the constitutions, that such
persons were not compellable to return."

Sec. 28. "A posthumous stranger could formerly, and may now be appointed heir, unless it appear, that he was conceived by a woman, who could not have been legally married to his father."

Sec. 36. "Also formerly, if a testator had given, revoked, or transferred a legacy nomine paenae, he would have acted ineffectually; and a legacy is reputed to be bequeathed nomine paenae, (i.e. as a punishment or penalty,) when an heir is put under the necessity of doing or not doing something: as if a testator had thus written, 'If my heir give his daughter in marriage to Titius; or if he do not give her in marriage to Titius, let him pay ten aurei to Seius;' or thus, 'If my heir shall alien my slave Stichus, let him pay ten aurei to Titius.' And this rule was so far observed, that it was expressly ordained by many constitutions, that even the emperor could not receive a legacy, which was bequeathed nomine paenae; nor could a penal legacy be valid, even when bequeathed by the testament of a soldier; although, in every other respect, the intention of a testator in a military testament was scrupulously adhered to. And even freedom could not be bequeathed, nor, in the opinion of Sabinus could an heir be added in a testament, nomine paenae; for, if a testator had said, 'Let Titius be my heir, but if he give his daughter in marriage to Seius, let Seius also be my heir,' the appointment of Seius would have been void; for the manner, in which an heir was laid under coercion, whether by the gift of a legacy, or by the addition of another heir, worked no alteration in the general rule of law. But this strictness hath not pleased us, and we have therefore ordained generally that things left, revoked, or transferred, nomine paenae, should fall under the same rules of law as other legacies, whereof the condition is neither impossible, prohibited by law, nor contrary to good manners, for the morality, of the present times, will not suffer testamentary dispositions of this character."

## TITLE XXII.

## DE LEGE FALCIDIA.

Sec. 2. "The law Falcidia looks to the quantity of the estate at the time of the death of the testator; and therefore if he who is worth but an hundred aurei at his decease, bequeath them all in legacies, the legatees must suffer a defalcation; for they will be entitled to no advantage, although the inheritance, after the death of the testator and before it is entered upon, should so increase by the acquisition of slaves, the children of female slaves, or the product of cattle, that after a full payment of the 100 aurei in legacies, an entire fourth of the whole estate might remain to the heir; the legacies notwithstanding would still be liable to a deduction of one-fourth. On the contrary, if the same testator hath bequeathed only 75 aurei, then, although before the entrance of the heir, the estate should so decrease by fire, shipwreck, or the loss of slaves, that its whole value should not be more than 75 aurei, or less, yet the legacies would still be due without defalcation; nor is this law predjudicial to an heir who is always at his election either to refuse or accept an inheritance; but it obliges legatees to compromise with the heir, lest they should lose the whole for want of someone to act."

BOOK III.

TITLE I.

DE HAEREDITATIBUS, QUAE AB INTESTATO DEFE-

RUNTUR.

Sec. 2. "And as we have observed before, those are sui haeredes or proper heirs, who at the death of the deceased, were under his power; as a son or a daughter, a grandson or a granddaughter by a son, a great-grandson or great-granddaughter by a grandson of a son, etc. Neither is it material, whether these children be natural or adopted. But, among natural children, we must reckon those, who, not born in lawful wedlock, are nevertheless, according to the tenor of the imperial constitutions, entitled to the rights of proper heirs, by being admitted Decurions. Those also are comprised within our own constitutions, which enact that, if any person shall keep a woman with whom he is not prohibited to marry, and have children by her, and shall afterwards, through affection, marry that woman, and have by her sons or daughters, not only these latter shall be legitimate and in the power of their father, but also the former, who gave occasion to the legitimacy of the children born afterwards. And this law shall obtain as to children born before marriage; although the children born subsequent to it, are dead, or none such are born. But a grandson or granddaughter, a great-grandson or great-granddaughter, is not reckoned in the number of proper heirs, unless the person preceding them in degree hath ceased to be under paternal power, either by death or some other means, as by emancipation; for, if a son, when his father died, was under the power of his father, the grandson cannot be the proper heir of his grandfather; and by parity of reasoning, this rule is understood to take place in relation to all descendants in the right line. But all posthumous children, who would have been under the power of their father, if they had been born in his lifetime, are esteemed sui haeredes, or proper heirs."

Sec. 6. "A son, a daughter, and a grandson or granddaughter by another son, are called equally to the inheritance; nor does the nearest exclude the more remote; for it seems just, that grandsons and granddaughters should succeed in the place of their father. By like reason, a grandson or granddaughter by a son, and a great-grandson or great-granddaughter by a grandson, are all called together. And since grandsons and granddaughters, great-grandsons and great-granddaughters, succeed in place of their parent, it seemed convenient, that inheritances should not be divided into capita, but into stirpes: so that a son, should possess one half, and the grandchildren, (however numerous) of another son, the other half of an inheritance. So, where there are grandchildren by two sons, the one son leaving one or two children, and the other three or four, the inheritance must belong, half to the grandchild, or the two grandchildren by the one son, and half to the three or four grandchildren by the other son."

Sec. 9. "Emancipated children by the civil law have no right to the inheritances of their parents; for those are not proper heirs, who have ceased to be under the power of their parent deceased, before his death, neither are they called to inherit by any other right according to the law of the twelve tables. But the praetor, induced

BOOK III.

TITLE I.

. . . . . IN RELATIONSHIP, GUAR AN INTERMEDIATE INFLU-

MENTUM.

by natural equity grants them possession of goods, by the edict beginning, unde liberi, as fully, as if they had been under power at the death of their parent; and this, whether they be sole, or mixed with others, who are proper heirs; therefore, when there are two sons, one emancipated, and the other under power at his father's death, the latter, by the civil law, is alone the heir, and alone the proper heir; but, when the emancipated son, by the indulgence of the praetor, is admitted to his share, then the proper heir becomes the heir only to his own moiety."

Sec. 11. "Adopted children have, therefore, fewer rights and privileges, than natural children; who, even after emancipation, retain the rank of children by the indulgence of the praetor, although they lose it by the civil law; but adopted children by the civil law, and are denied admittance into the rank of children by the praetor; and properly; for civil policy cannot destroy natural rights; nor can natural children ever cease to be sons and daughters, grandsons and granddaughters although they may cease to be proper heirs; but adopted children, when emancipated, become instantly strangers; for the right and name of son or daughter, obtained by the civil right of adoption, may be destroyed by the civil right of emancipation."

Sec. 12. "The same rules are observed as to that possession of goods, which the praetor contrary to the testament of the parent, grants to children, not mentioned therein: that is, who are neither instituted heirs, nor properly disinherited. For the praetor calls those, who were under power at the death of their parents, and those also, who are emancipated, to the same possession of goods; but he repels those, who were in an adoptive family at the decease of their natural parents. And, as the praetor admits not such adopted children, as have been emancipated by their adoptive father to succeed him ab intestato, much less does he admit such children to possess the goods of their adoptive father contrary to his testament; for by emancipation, they cease to be in the number of his children."

Sec. 13. "We must nevertheless observe, that, although those, who were in an adoptive family, but have been emancipated by their adoptive father, after the decease of their natural father, dying intestate, are not admitted by that part of the edict, by which children are called to the possession of goods, yet they are admitted by another part, by which the cognates of the deceased are called to the possession of his effects. But, by this last-named part of the edict, the cognates are only called when there is no opposition from proper heirs, emancipated children, or agnates; for the praetor first calls the proper heirs with the emancipated children, then the agnates, and lastly the nearest cognates."

Sec. 15. "The ancient law, preferring descendants from males, called only grandchildren so descended, to the succession as proper heirs, by right of agnation; reputing grandchildren born of daughters, and great-grandchildren born of granddaughters, to be cognates, and prohibiting them from succeeding to their grandfather and great-grandfather, maternal or paternal, until after the line of agnati was exhausted. But the emperors Valentinian, Theodosius and Arcadius, would not continue such a violence against nature; and, inasmuch as the name of grandchild and great-grandchild, is common, as well to descendants by females, as by males, they granted an equal right of succession in either case. But, to the end, that those persons who have been favoured by nature, as well as by the suffrage of antiquity, might enjoy some peculiar previleges, they thought it right, that the portions of grandchildren, great-grandchildren, and other lineal descendants of a female, should be somewhat diminished, and therefore

by natural equity grants than possession of goods, by the edict be-
fitting, made liberal, as fully, as if they had been under power at
the death of their parent and this, whether they be sole, or mixed
with others, who are proper heirs: therefore, when there are two
sons, one emancipated, and the other under power at his father's
death, the latter, by the civil law, is alone the heir, and alone
the proper heir; when the emancipated son, by the intervance
of the praetor, is admitted to his share, then the proper heir be-
comes the heir only to his own estate."

Sec. 11. "Adopted children have, therefore, fewer rights and
privileges, than natural children; even after emancipation,
retain the rank of children by the indulgence of the praetor, al-
though they have it by the civil law: but adopted children by the
civil law, are denied admittance into the rank of children by
the praetor; and properly for civil policy cannot destroy natural
rights nor one natural children over cease to be one and another,
grandsons and grandaughters although they may cease to be proper
heirs; but adopted children, when emancipated, become instantly
strangers for the right and name of son or daughter, obtained by
the civil right of adoption, may be destroyed by the civil right of
emancipation."

Sec. 12. "The same rules are observed as to that possession of
goods, which the praetor contrary to the testament of the parent,
grants to children, not mentioned therein: that is, who are neither
instituted heirs, nor properly disinherited. For the praetor calls
these, who were under power at the death of their parents, and these
also, who are emancipated, to the same possession of goods by their
respective grades, who were in an adoptive family at the decease of their
natural parents. And, as the praetor admits not such adopted children,
as have been emancipated by their adoptive father to succeed him if
intestate, much less does he admit such children to possess the goods
of their adoptive father contrary to his testament; for by emancipa-
tion, they cease to be in the number of his children."

Sec. 13. "So must a watchful observer, that, although those,
who were in an adoptive family, had been emancipated by their
adoptive father, after the decease of their natural father, dying
intestate, are not admitted by that part of the edict, by which
children are called to the possession of goods, yet they are ad-
mitted by another part, by which the consanus of the deceased are
called to the possession of his effects. But, by this last-named
part of the edict, the consanus are only called when there is no
opposition from proper heirs, emancipated children, or agnates for
the praetor first calls the proper heirs with the emancipated children,
then the agnates, and lastly the nearest consanus."

Sec. 14. "The ancient law, preferring descendants from male,
called only grandchildren to succession, to the succession as proper
heirs, by right of agnation; rejecting grandchildren born of daughters,
and grandchildren born of grandchildren, to be consanus, and
prohibiting them from succeeding to their grandfather and great-
grandfather, paternal or paternal, until after the line of agnati
was exhausted. But the emperors Valentinian, Theodosius and Arcadius,
would not continue such a violence against nature, and commanded
the sons of grandchild and great-grandchild, in common, as well to
descendants by females, as by males, they granted an equal right of
succession in either case. But, to the end, that those persons who
have been favoured by nature, as well as by the suffrage of antiquity,
might only some peculiar privileges, they thought right, that the
portions of grandchildren, great-grandchildren, and other lineal
descendants of a female, should be somewhat limited, and therefore

they have not permitted such persons to receive so much by a third part, as their mother or grandmother would have received; or their father or grandfather, paternal or maternal, at the decease of a female; for we now treat of inheritance, derived from a female; and, although there were only grandchildren by a female to take an inheritance, yet the emperors did not call the agnates to the succession. And as, upon the decease of a son, the law of the twelve tables calls the grandchildren, and great-grandchildren, male and female to represent their father as to the succession of their grandfather, so the imperial ordinance calls them to succession in the place of their mother or grandmother, with the before-regulated diminution of a third part of their share. But as there still remained matters of dispute between the agnati and the above named grandchildren, the agnati claiming the fourth part of the estate of the deceased by virtue of a certain constitution, we have therefore not permitted it to be inserted into our code from that of Theodosius. And further, we have altered the old law by enacting that agnates shall not be entitled to any part of the goods of the deceased, while grandchildren born of a daughter, or great-grandchildren born of a granddaughter, or any other descendants from a female in the right line, are living; lest those, who proceed from the transverse line, should be preferred to lineal descendants. And we now decree, that this, our ordinance, shall obtain according to its full tenor. But as the old law ordered, that every inheritance should be divided in stirpes and not in capita, between the son of the deceased and his grandsons by a son, so we also ordain, that similar distribution shall be made between sons and grandsons by a daughter, and between grandsons and granddaughters, great-grandsons and great-granddaughters, and all other descendants in a right line, so that the issue, either of a mother or a father, or of a grandmother or a grandfather may obtain their portions without any diminution; and if on the one part there should be one or two claimants, and on the other part three or four, that the greater number shall be entitled to one-half, and the less number to the other half of the inheritance."

## TITLE II.

## DE LEGITIMA AGNATORUM SUCCESSIONE.

Sec. 1. "Agnates, as we have observed in the first book, are those, who are related or cognated by males, (quasi a patre cognati;) and therefore brothers, who are the sons of the same father, are agnates in regard to each other: they are also cansanguinei, of the same blood; but it is not required, that they should have the same mother. An uncle is also agnate to his brother's son, and vice versa the brother's son to his paternal uncle, and brothers patruel, that is the children of brothers, who are also called consobrini, cousins are likewise reckoned agnates. Thus we may enumerate many degrees of agnation; and even those, who are born, after the decease of their parents, obtain the rights of consanguinity: the law nevertheless does not grant the right of inheritance to all the agnati, but to those only who are in the nearest degree, when it becomes certain that the deceased hath died intestate."

Sec. 3. "Succession among males even in the most distant degree proceeds according to the right of agnation. But it hath been thought rightly that females should only inherit by consanguinity, if sisters; and not in a more remote degree; though males might be admitted in the most distant degree to inherit females: thus in case of death, the inheritance of your brother's daughter, or if the daughter of your

## TITLE II.

### IN QUALITATE AGNATORUM SUCCESSIONE.

Sec. 1. "Agnates, as to have observed in the first book, are those, who are related or connected by males, (quasi a mare cognati) and therefore brothers, who are the sons of the same father, are agnates in regard to each other: they are also consanguinei, of the same blood; but it is not required, that they should have the same mother. An uncle is also agnate to his brother's son, and vice versa the brother's son to his paternal uncle, and brothers paternal, that is the children of brothers, who are also called consortial, consimilarly are likewise reckoned agnates. Thus we may enumerate many degrees of agnation; and even these, who are born, after the decease of their parents, attain the rights of consanguinity: the law nevertheless does not grant the right of inheritance to all the agnati; but to those only who are in the nearest degree, when it receives certain that the deceased had died intestate."

Sec. 2. "Succession among males even in the most distant degree proceeds according to the right of agnation. But it hath been thereby plainly that females should only inherit by consanguinity, if nearest and not in a more remote degree though males might be admitted in the next degree to inherit females: thus in case of death, the inheritance of your brother's daughter, or if the daughter of your

andronicus

paternal uncle or aunt, would appertain to you; but your inheritance would not appertain to them. And this was so constituted, because it seemed expedient for the benefit of society, that inheritance should for the most part fall into the possession of males. But, as it was unjust, that females should be thus almost wholly excluded as strangers, the praetor admitted them to the possession of goods in that part of his edict, in which he gives the possession of goods on account of proximity; yet they are only admitted upon condition, that there is no agnate or nearer cognate. But the law of the twelve tables did not introduce these dispositions; for that law, according to the plainness and simplicity which are agreeable to all laws, called the agnates of either sex, or any degree, to succession, in the same manner as it admitted proper heirs. But the middle law, which was posterior to the law of the twelve tables, and prior to the imperial constitutions, subtilly introduced the before-mentioned distinction, and entirely repelled females from the succession of agnates, no other method of succession being known, until the praetors, correcting by degrees the asperity of the civil law, or supplying what was deficient, added in their edicts a new order of succession, being induced to it by a motive of humanity; and, by introducing the line of cognation on account of proximity, they thus assisted the females, and gave them the possession of goods, which is called unde cognati. But we, although strictly adhering to the law of the twelve tables in regard to females, must yet commend the humanity of the praetors, though they have not afforded a full remedy in the present case. But, since the same natural degree of relation, and the same title of agnation appertains as well to females as to males, what reason can be assigned, that males should be permitted to succeed all their agnati, and that no means of succession should be open to any female agnate, except a sister? We therefore, reducing all things to an equality, and making our disposition conformable to the laws of the twelve tables, have by our constitution ordained, that all legitimate persons, that is, descendants from males, whether male or female, shall be equally called to the rights of succession ab intestato according to the prerogative of their degree, and be by no means excluded, although they possess not the rights of consanguinity in so near a degree as sisters."

Sec. 4. "We have also thought fit to add to our constitution, so that one degree only is transferred from the line of cognation to the line of legitimate succession, i.e. of agnation; and not only the son and daughter of a brother (according to our former definition of agnates) shall be called to the succession of their paternal uncle, but the son or daughter of a sister, who is either by the same father or by the same mother, may also be admitted with agnates to the succession of their maternal uncle; but no one of the descendants of the son or daughter of a sister is by any means to be admitted. And, when a person dies, who at his decease was both a paternal and maternal uncle, that is, who had nephews or nieces living both by a brother and by a sister, then such children succeed in the same manner, as if they were all descendants from males, when the deceased leaves no brother or sister; and they take the inheritance not per stirpes, or according to their respective stocks, but per capita, i.e. by poll; but, if there be brothers or sisters, and they accept the succession, all others of a more remote degree are excluded."

Sec. 8. "A parent, who hath emancipated a son, a daughter, a grandson, a granddaughter, or other lineal descendant under a fiduciary contract, is admitted to their legitimate succession. But it is now effected by our constitution, that every emancipation shall for the future be regarded, as if it had been made under such a contract; although among the ancients the parent was never called to the legitimate succession of his children, unless he had actually emancipated them under a fiduciary contract."

...publishing company, Inc.

Sec. 4. "A parent, who both contributed a sum, a fraction, a creation, a procurement, or other thing preceding under a fiduciary contract, is admitted to their legitimate succession. But it is not affected by our constitution, that every accomplice shall for the future be regarded, as if it had been made under such a contract although under the ancient law, a parent was never called to the legitimate succession of his children, unless he had actually executed his under a fiduciary contract."

Sec. 5. "A parent, who both contributed a sum, a fraction, a creation, a procurement, or other thing preceding under a fiduciary contract, is admitted to their legitimate succession. But it is not affected by our constitution, that every accomplice shall for the future be regarded, as if it had been made under such a contract although under the ancient law, a parent was never called to the legitimate succession of his children, unless he had actually executed his under a fiduciary contract."

Sec. 6. "We have also thought fit to add to our constitution, so that one degree only is transferred from the line of ascents to the line of legitimate successors, i.e. of emulant and not only the son and daughter of a brother (according to our former dictation of equals) shall be called to the succession of their paternal uncle, for the son or daughter of a sister, who is either by the side father or by the same mother, may also be admitted with equals to the succession of their maternal uncle; but no one of the descendants of the son or daughter of a sister is by any means to be admitted. And when a person dies, who at his decease has both a paternal and maternal uncle, that is, who had nephews or nieces living both by a brother and by a sister, then such children succeed in the same manner, as if they were all descendants from sons, when the deceased leaves no brother or sister; they take the inheritance not per stirpes, or one by one, but per capita, i.e. by full two of three or a more remote degree are excluded."

## TITLE III.

### DE SENATUS-CONSULTO TERTYLLIANO.

Sec. 1a. "Such was the rigor of the law of the twelve tables, that it preferred the issue by males, and excluded those who were related by the female line, so that the right of succession was not permitted to take place reciprocally between a mother and her son, or a mother and her daughter. But the praetors, on account of the proximity of cognation, admitted those, who were related by the female line, to the succession, giving them the possession of goods, called unde cognati."

Sec. 1. "But these narrow limits of the law were afterwards enlarged by the emperor Claudius, who first gave the legal inheritance of deceased children to their mothers in assuasion of their grief for so great a loss."

Sec. 2. "Afterwards by the Tertillian senatus-consultum, made in the reign of the emperor Adrain, the fullest care was taken, that the succession of children should pass to their mother, though not to their grandmother: so that a mother, born of free parents, and having the right of three children,—also a freedwoman, having the right of four children, may be admitted, although under power of a parent, to the goods of their intestate children. But, a mother under power cannot enter upon the inheritance of her children, but at the command of him, to whom she is subject."

Sec. 3. "The children of a deceased son who are proper heirs, or in the place of proper heirs, either in the first or an inferior degree, are preferred to the mother. And the son, or daughter, of a deceased daughter is also by the constitutions preferred to the mother; i.e. to their grandmother. Also, the father of a son, or daughter, is preferred to the mother; not so the grandfather or great-grandfather, when the inheritance is contended for by these only without the father. Also the consanguine brother either of a son or a daughter excluded the mother; but a consanguine sister was admitted equally with her mother. If there had been a brother and a sister of the same blood with the deceased, the brother excluded his mother, although she had children; but the inheritance, in this case, was equally divided between brothers and sisters."

Sec. 4. "But by a constitution, inserted in the code, and honoured with our name, we have thought fit, that mothers should be favoured in regard to the considering natural reason, the pains of child-birth, the danger, and death itself, which they often suffer; we therefore have esteemed it highly unjust, that the law should make that detrimental, which is in its nature merely fortuitous; for, if a married woman freeborn, does not bring forth three children, or if a freewoman does not become the mother of four, ought they, for this reason only, to be deprived of succession to their children? For how can it be imputed to them, as a crime? We therefore, not regarding any fixed number of children, have given a full right to every mother, whether ingenuous or freed, of being called to the legitimate succession of her child or children deceased, whether male or female."

Sec. 5. "In examining the constitutions of former emperors, relating to the right of succession, we observed that they were partly favourable to mothers and partly grievous; not always calling them to the entire inheritance of their children, but in some

## RE SEXUAL-CURSUIVE VENTILLATION.

Sec. 1a. "Such was the rigor of the law of the twelve tables, that it preferred the issue by males, and excluded those who were related by the female line, so that the right of succession was not permitted to take place reciprocally between a mother and her son, or a mother and her daughter. But the praetors, on account of the proximity of connection, admitted those, who were related by the female line, to the succession, giving them the possession of goods called unde cognati."

Sec. 1. "But these narrow limits of the law were afterwards enlarged by the emperor Claudius, who first gave the legal inheritance of deceased children to their mothers in assumption of their grief for so great a loss."

Sec. 2a. "Afterwards by the Tertullian senatus-consultum, pole in the order of the emperor Adrian, the fullest one was taken, that the succession of children should pass to their mothers, though not to their grandmothers, so that a mother, free of issue, and having the right of three children—also a freedwoman, having the right of four children, may be admitted, although under power of a parent, to the goods of their intestate children. But a mother under power cannot enter upon the inheritance of her children, but of the peculium of him, to whom she is subject."

Sec. 3. "The children of a deceased son who are proper heirs, or in the place of proper heirs, either in the first or an inferior degree, are preferred to the mother. And the son, or daughter, of a deceased daughter is also by the constitutions preferred to the mother [i.e., to their grandmother]. Also, the father of a son, or grandfather, is preferred to the mother; not so the grandfather or great-grandfather, when the inheritance is contended for by these only without the father. Also the consanguine brother of a son or a daughter excluded the mother; it there had been a brother and limited quality with her mother. If there had been a brother or sister of the same blood with the deceased, the brother excluded the mother, although she the children; but the inheritance, in this case, was equally divided between brothers and sisters."

Sec. 4. "But by a constitution, inserted in the code, and concerned with our name, we have thought fit, that mothers should be favored in regard to the consolatory natural reason, the pains of child-birth, the danger, and death itself, which they often suffer as therefore have enjoined it highly natural, that the law should make that instrument, which is in its nature nearly fortuitous for, if a married woman does not forego the mother of four, ought she, or if a freedwoman does not forego the mother of four, to be deprived of succession to their children for this reason only, to be imputed? We therefore, not for her can it be imputed to them, as a privilege given to the regarding any fixed number of children, have given a full right to every mother, whether ingenuous or freed, of being called to the legitimate succession of her child or children deceased, whether male or female."

Sec. 5. "In examining the constitutions of former emperors, relating to the right of succession, we observed that they were partly favorable to mothers and partly favored not always solicitous for them to the entire inheritance of their children, but in some

cases depriving them of a third which was given to certain legitimate persons; and in other cases, allowing a third. It hath therefore seemed right to us, that mothers should receive the succession of their children without any diminution, and that they should be exclusively preferred before all legitimate persons, except the brothers and sisters of the deceased, whether consanguine, or cognate; but, as we have preferred the mother to all other legitimate persons, we are willing to call all brothers and sisters, legitimate or otherwise, to the inheritance together with the mother; yet in such manner, that if only the sisters agnate or cognate, and the mother of the deceased survive, the mother shall have one half of the effects, and the sisters the other. But, if a mother survive, and also a brother or brothers, or brothers and sisters, whether legitimate or cognate, then the inheritance of the intestate son or daughter must be distributed in capita; i.e. into equal shares."

Sec. 6. "Having thus taken care of the interest of mothers, it behoves them in return to consult the welfare of their children. Be it known therefore, that if a mother shall neglect, during the space of a whole year, to demand a tutor for her children, or to require a new tutor in the place of a former, who hath either been removed or excused, she will be deservedly repelled from the succession of such children, if they die within puberty."

Sec. 7. "Although a son or daughter be of spurious birth, yet the mother, by the Tertyllian senatus-consultum, may be admitted to succeed to the goods of either."

## TITLE IV.

## DE SENATUS-CONSULTO ORFICIANO.

Sec. 1a. "On the contrary, children are admitted to the goods of their intestate mothers, by the Orfician senatus-consultum, which was enacted in the consulate of Orficius and Rufus, in the reign of the emperor Marcus Antoninus; and, by this decree, the legal inheritance is given both to sons and daughters, although under power; and they are preferred to the consanguine brothers, and to the agnates of their deceased mother."

Sec. 1. "But, since grandsons and granddaughters were not called by the senatus-consultum to the legitimate succession of their grandmother, the ommission was afterwards supplied, by the imperial constitutions; so that grandsons and granddaughters were called to inherit, as well as sons and daughters."

Sec. 3. "It is lastly to be noted, that even spurious children are admitted by the Orfician senatus-consultum to the inheritance of their mother."

## TITLE V.

## DE SUCCESSIONE COGNATORUM.

Sec. 1. "By the law of the twelve tables, neither the agnates, who have suffered diminution, nor their issue, are esteemed legitimate heirs; but they are called by the praetor in the third order of succession; but we must except a brother and sister, (although) emancipated,

TITLE IV.

IN SUCCESSION-CONSANGUINITY.

Sec. 1. "In the country, children are admitted to the goods of their intestate mother, by the Cyrillian succession-consanguinity, which succeed in the compilete or Cyrilian and Dutch, in the rules of the superior Roman Antonians; and, by this decree, the legal inheritance is given both to sons and daughters, although unlike and they are preferred to the consanguine brothers, and to the agnates of their deceased mother."

Sec. 2. "But, since grandsons and granddaughters were not called by the consanguinean to the legitimate succession of their grandmother, the consulate was afterwards supplied, by the imperial constitutions, so that grandsons and granddaughters were called to inherit, as well as sons and daughters."

Sec. 3. "It is lastly to be noted, that even spurious children are admitted by the Cyrilian succession-consanguinean to the inheritance of their mother."

TITLE V.

IN SUCCESSION-COGNATESHIP.

Sec. 1. "By the law of the twelve tables, neither the agnates, who have suffered diminution, nor their issue, are restored legitimate heirs; but they are called by the praetor in the third order of succession for no more except a brother and sister, (although) exemplarily

but not their children; for the constitution of Anastasius calls an emancipated brother or sister to the succession of a brother or sister, together with those, who having not been emancipated, are integri juris; but it does not call them to an equal share of the succession, as may easily be collected from the words of the constitution, which prefers an emancipated brother or sister to other agnates of inferior degree, although unemancipated; and consequently to all cognates."

Sec. 2. "Collateral relations by the female line, are called by the praetor in the third order of succession, according to their proximity."

Sec. 4. "It is manifest, that spurious children have no agnates; inasmuch as agnation proceeds from the father, cognation from the mother; and such children are looked upon as having no father. And for the same reason, consanguinity cannot be said to subsist between the bastard children of the same woman; because consanguinity is a species of agnation. They can therefore only be allied to each other as they are related to their mother, that is, by cognation; and it is for this reason that all such children are called to the possession of goods by that part of the praetorian edict, by which cognates are called by the right of their proximity."

## TITLE VI.

## DE GRADIBUS COGNATIONUM.

Sec. 1a. "It is here necessary to explain how degrees of cognation are to be computed; and first we must observe, that there is one species of cognation which relates to ascendants, another to descendants, and a third to collaterals. The first and superior cognation is that relation, which a man bears to his parents; the second, or inferior, is that, which he bears to his children; the third is that relation which he bears to his brothers and sisters and their issue; and also to his uncles and aunts, whether paternal or maternal. The superior and inferior cognation commence at the first degree; but the transverse or collateral cognation commences at the second."

Sec. 1. "A father or a mother, is in the first degree in the right line ascending; and a son or a daughter, is also in the first degree in the right line descending. A grandfather or a grandmother, is in the second degree in the right line ascending; and a grandson or granddaughter, is in the second degree in the right line descending; and a brother or a sister, is also in the second degree in the collateral line. A great-grandfather or a great-grandmother, is in the third degree in the right line ascending; and a great-grandson or great-granddaughter, is in the third degree in the right line descending; and the son or daughter of a brother or sister is also in the third degree in the collateral line; and by a parity of reasoning an uncle or an aunt, whether paternal or maternal, is also in the third degree. A paternal uncle, called patruus, is a father's brother; a maternal uncle, called avunculus, is a mother's brother; a paternal aunt, called amita, is a father's sister; and a maternal aunt, called matertera, is a mother's sister. And each of these persons is called in Greek [illegible] promiscuously."

Sec. 2. "A great-great-grandfather or a great-great-grandmother, is in the fourth degree in the right line ascending; and a great-great-grandson or a great-great-granddaughter, is in the fourth degree in the right line descending. Also, in the transverse or collateral line, the grandson or the granddaughter, of a brother or a sister,

## TITLE II.

### OF CONSANGUINITY AND AFFINITY.

Sec. 1. "It is necessary to explain the degrees of consanguinity and affinity, and first we must observe, that there is one species of consanguinity which relates to ascendants, another to descendants, and a third to collaterals. The first and superior connection is that relating, which a man bears to his parents the second, or that relation, which a son bears to his children and their issue; and also to his uncles and aunts, brother germans or sisters, and their issue; the third, or collateral consanguinity, is that between persons who descend from the same parents, but not their children, for the continuation of ascendants ends at the separation of collateral connexion at the first degree, but the transmission of collateral consanguinity at the second."

Sec. 2. "A father or a mother, is in the first degree in the right line ascendant; and a son or a daughter, is also in the first degree in the right line descending. A grandfather or a grandmother, is in the second degree in the right line ascendant; and a grandson or granddaughter, is in the second degree in the right line descendant; and a brother or a sister, is also in the second degree in the collateral line. A great-grandfather or a great-grandmother, is in the third degree in the right line ascendant; and a great-grandson or great-granddaughter, is in the third degree in the right line descendant; and the son or daughter of a brother or sister is also in the third degree in the collateral line; and by a parity of reasoning an uncle or an aunt, whether paternal or maternal, is also in the third degree. A paternal uncle, called patruus, is a father's brother; a maternal uncle, called avunculus, is a mother's brother; a paternal aunt, called amita, is a father's sister; and a maternal aunt, called matertera, is a mother's sister. And each of those persons is called in Greek [illegible] or proximus."

Sec. 3. "A [illegible] or a great-great-grandfather, is in the fourth degree in the right line ascendant; and a great-great-grandson or a great-great-granddaughter, is in the fourth degree in the right line descending. Also, in the transverse or collateral line, the cousins or the grandchildren, of a brother or a sister,

is in the fourth degree; so is a great-uncle or a great-aunt, paternal or maternal and cousins german, (consobrini). But some have been rightly of opinion, that the children of sisters are properly consobrini, quasi consororini; that the children of brothers are properly brothers patruel, if males; and sisters patruel, if females; and that, when there are children of a brother, and children of a sister, they are properly amitini; but the sons of your aunt, by the father's side call you consobrinus and you call them amitini."

Sec. 3. "A great-grandfather's grandfather or a great-grandfather's grandmother, is in the fifth degree in the line ascending, and a great-grandson, or a great-granddaughter, or a great-granddaughter, of a grandson or a granddaughter is in the fifth degree in the line descending. In the transverse or collateral line, a great-grandson or great-granddaughter, of a brother or sister, is also in the fifth degree; and consequently so is a great-grandfather's brother or sister, or a great-grandmother's brother or sister. The son or daughter also of a cousin german is in the fifth degree; and so is the son or daughter of a great-uncle or great-aunt, paternal or maternal; and such son, or daughter is called propior sobrino and propior sobrina."

Sec. 4. "A great-grandfather's great-grandfather or a great grandfather's great-grandmother, is in the sixth degree in the line ascending; and the great-grandson or great- granddaughter of a great-grandson or a great-granddaughter, is likewise in the sixth degree in the line descending. And, in the transverse or collateral line, a great-great-grandson or a great-great-granddaughter, of a brother or sister, is also in the sixth degree; and consequently a great-great-grandfather's brother or sister, and a great-great-grandmother's brother or sister, is in the sixth degree. And the son or daughter of a great-great-uncle or a great-great-aunt, paternal or maternal, is also in the sixth degree; and so also is the son or daughter of the son or daughter of a great-uncle or great-aunt, paternal or maternal. The grandson also, or the granddaughter of a cousin german is in the sixth degree; and, in the same degrees between themselves, we reckon the cobrini and the sobrinae; that is, the sons and daughters of cousins german in general, whether such cousins german are so related by two brothers or by two sisters, or by a brother and a sister."

## TITLE VII.

## DE SERVILI COGNATIONE.

Sec. 1a. "It is certain, that the part of the edict, in which the possession of goods is promised, according to the right of proximity, does not relate to servile cognation; which hath not been regarded by any ancient law. But, by our own constitution, concerning the right of patronage, which right was heretofore obscure and every way confused, we have ordained (humanity so suggesting) that, if a slave shall have a child, or children, either by a freewoman or by a bondwoman, with whom he lives in contubernio, and, on the contrary, that, if a bondwoman shall have a child, or children, of either sex by a freeman, or by a slave, with whom she so lives, and such father and mother are afterwards enfranchised, the children shall succeed to their father or mother, without regarding the right of patronage. We have not only called these children to succeed to their parents, but also mutually to each other, whether they are sole in succession, as having all been born in servitude and afterwards manumitted, or whether they succeed with others, who were conceived after the infranchisement of their

## TITLE VII.

### IN INDIVIDUAL CONSANGUINITY.

Sec. 1. *It is certain, that the part of the child, in which the possessions of people is promised, according to the right of proximity, does not relate to service, according with faith not being regarded by any contract.* But, by our own constitution, concerning the right of patronage, which rights are heretofore observed and every way confirmed, we have ordained (humanity so suggesting) that, if a slave shall have a child, or children, either by a freewoman or by a bondwoman, with whom he lives in concubinage, and, on the contrary, that, if a bondwoman shall have a child, or children, of either sex by a freeman, or by a slave, with whom she so lives, and such father and mother are afterwards married, the children shall succeed to their father or mother, without requiring the right of patronage. We have not only called these children to succeed to their parents, but also mutually to each other, whether only or with in succession, as having all been born in marriage and afterwards manumitted, or whether they succeed with others, who were born after the manumitment of their

parents; and whether they are all by the same father and mother, or by a different father or mother; and, that children born in slavery, but manumitted, should succeed in the same manner, as the issue of parents legally married."

Sec. 1. "From what hath been said, it appears that those, who are in an equal degree of cognation, are not always called equally to the succession; and farther, that even the nearest of kin, is not constantly to be preferred. For, inasmuch as the first place is given to proper heirs, and to those who are numbered with proper heirs, it is apparent, that the great-grandson or great-great-grandson, is preferred to the brother or even the father or mother of the deceased; although a father and mother, (as we have before observed,) obtain the first degree of relation, a brother the second, a great-grandson the third, and a great—great-grandson the fourth; neither does it make any difference whether such grandchildren were under the power of the deceased at the time of his death, or out of his power; either by being themselves emancipated, or by being the children of those who were so; neither can it be objected, that they are descended by the female line. But, when there are no proper heirs, nor any of those who are permitted to rank with them, then an agnate, who hath the full right of agnation in him, although he be in the most distant degree, is generally preferred to a cognate, who is in the nearest degree; thus the grandson or great-grandson of a paternal uncle is preferred to a maternal uncle or aunt. Hence, when there are no proper heirs, nor any who are numbered with them, nor any who ought to be preferred by the right of agnation, (as we have before noted,) then the nearest in degree of cognation, is called to the succession; and if there be many in the same degree, they are all called equally. But a brother and sister, although emancipated, are yet called to the succession of brothers and sisters; for although they have suffered diminution, they are nevertheless preferred to all agnates of a more remote degree."

## TITLE VIII.

## DE SUCCESSIONE LIBERTORUM.

Sec. 2. "But afterwards the rights of patrons, who had wealthy freedmen, were enlarged by the Papian law: which provides that he shall have a man's share out of the effects of his freedman, whether dying testate or intestate, who hath left a patrimony of an hundred thousand sestertii and fewer than three children: so that, when a freedman hath left only one son or daughter, a moiety is due to the patron, as if the deceased had died testate without either son or daughter. But, when there are two heirs, male or female, a third part only is due to the patron; and, when there are three, the patron is wholly excluded."

Sec. 3. "But our constitution, published in a compendious form, (in the Greek language, for the benefit of all nations,) ordained that, if a freeman or a freewoman die, possessed of less than an hundred aurei, (for thus have we interpreted the sum mentioned in the Parian law, counting one aureus for a thousand sestertii,) the patron shall not be entitled to any share in a testate succession. But, where a freeman or freewoman dies intestate, and without children, we have reserved the right of patronage entire, as it formerly was, according to the law of the twelve tables. But, if a freedperson die, worth more than an hundred aurei, and leave one child or many, of either sex or any degree, as the heirs and possessors of his goods, we have

TITLE VIII.

RE SUCCESSION UPON DEATH.

permitted, that such child or children shall succeed their parent to the entire exclusion of the patron and his heirs; and if any free-persons die without children and intestate, we have called their patrons or patronesses to their whole inheritances. And if any freed-person, worth more than an hundred aurei, hath made a testament, omitted his patron, and left no children, or hath disinherited them; or if a mother or maternal grandfather, being freedpersons, have omitted to mention their children in their wills, so that such wills cannot be proved to be inofficious, then, by virtue of our constitution, the patron shall succeed, not to a moiety as formerly, but to the third part of the estate of the deceased, by possession contra tabulas; and, when freedpersons, leave less than the third part of their effects to their patrons, our constitution ordains, that the deficiency shall be supplied; nor shall this third part, be subject to trusts, or legacies, even for the benefit of the children of the deceased; for the co-heirs only of the patron shall bear this burden. In the before-mentioned constitution, we have collected many more cases, necessary in relation to the right of patronage; that patrons and patronesses, their children and collateral relations, as far as the fifth degree, might be called to the succession of their freed-men and freedwomen; as will appear more fully from the ordinance itself. And, if there be many children of one, two or more patrons or patroness, the nearest in degree, is called to the succession of his freedman or freedwoman; and, when there are many in equal degree, the estate must be divided in capita and not in stirpes: the same order is decreed to be observed among the collaterals of patrons and patronesses; for we have rendered the laws of succession almost the same both as to ingenui and libertini."

## TITLE IX.

### DE ASSIGNATIONE LIBERTORUM.

Sec. 1. "Freedpersons of either sex are assignable; not only to a son or grandson, but to a daughter or granddaughter."

Sec. 2. "The power of assigning freedpersons is given to him, who hath two or more children un-emancipated, so that a father may assign a freedman or freedwoman to children retained under his power: hence it became a question, if a father should assign a freedman to his son and afterwards emancipate that son, whether the assignment would not be null? Which hath been determined in the affirmative; and so thought Julian and many others."

## TITLE X.

### DE BONORUM POSSESSIONIBUS.

Sec. 1. "The possession of goods or praetorian testamentary successions, are these. First, that which is given to children, not mentioned in the testament; this is called possession contrary to the testament. The second, that which the praetor promises to all written heirs, and is therefore called possession according to the testament. These being fixed he goes to intestacies; and first he gives the possession called unde liberi, to the proper heirs, or to those, who by the praetorian edict are numbered among the proper heirs: secondly, to the legitimate (legal) heirs: thirdly, to ten persons, in preference

lawbook exchange, ltd.

## TITLE IX.

### IN ASSIGNMENT OR DISPOSITION.

Sec. 1. "Freedpersons or either may be assigned not only to a son or grandson, but to a daughter or granddaughter."

Sec. 2. "The power of assigning freedpersons is given to him, who puts two or more children on an equality, so that a father may assign a freedman or freedwoman to children retained under the power of another; it is further should assign a freedman to his son and afterwards remarries (not or, whether the assignment would be wholly void or be determined in the alternative; and so clearly fixed and many others."

## TITLE X.

### IN MONEY BEQUESTS(INGS.

Sec. 1. "The possession of goods or prestation testamentary successors, are those. First, that which is given to children, not mentioned in the testament this is called possession contrary to the testament. The second, that which the praetor provides to all written heirs, and is therefore called possession according to the testament. These being fixed be made to intestates and first be given the possession called unde liberi, to the proper heirs, or to those, who by the praetorian edict are numbered among the proper heirs: secondly, to the legitimate (legal) heirs. thirdly, to ten persons, in preference

to a stranger, who was the manumittor, viz.: to a father, a mother, a grandfather or a grandmother, paternal or maternal; to a son, a daughter, a grandson or a granddaughter, as well by a daughter as by a son; to a brother or sister, either consanguine or uterine: fourthly, to the nearest: cognates: fifthly, to those who are, as it were, of the family: sixthly, to the patron or patroness, and to their children, and their parents: seventhly, to an husband and wife: eighthly, to the cognates of a manumittor or patron."

## TITLE XIII.

### DE SUCCESSIONIBUS SUBLATIS, QUAE FIERANT PER BONORUM VENDITIONES, ET EX SENATUS-CONSULTO CLAUDIANO.

Sec. 1a. "There were many other kinds of universal succession before that, which we treated of in the foregoing title: as the bonorum emptio; which was introduced with many intricacies for the sale of debtor's estates, and continued as long as the ordinary judgments were in practice: but, when the extraordinary judgments were uded, the emptio bonorum and the ordinary judgments ceased together. Creditors can now possess themselves of the goods of their debtors and dispose of them as they think proper, by the decree of a judge. These points are treated of more at large in the books of our digests. There was also, by virtue of the Claudian decree, another universal acquisition called miserabilis; for example, if a freewoman had debased herself by cohabiting with a slave, she lost her freedom by the before named decree, and, together with her freedom, her estate and substance. But this was, in our opinion, unworthy of our reign, and ought to be expunged; hence, we have not permitted it to be inserted in the digests."

# BOOK IV.

## TITLE I.

### DE OBLIGATIONIBUS, QUAE, EX DELICTO NASCUNTUR.

Sec. 9. "A theft may be committed even of free persons; as, for instance, when children who are under power, are surreptitiously taken from their parents."

Sec. 12. "When persons under the power of parents or masters take from them anything surreptitiously, it is considered that a theft is committed; so that it cannot be prescribed to, by any one, until it hath first reverted into the power of the owner; and yet an action of theft will not lie; for no action lies between parents and children, or masters and slaves. But if the fact were done by the aid and advice of any other, inasmuch as a theft is committed, an action of theft will lie against the accessory."

## TITLE IV.

## DE INJURIIS.

Sec. 1. "An injury may be done not only by beating and wounding, but also by slanderous language; by seizing the goods of a man as if he were a debtor, when the person who seized them, well knew that nothing was due to him; by writing a defamatory libel, poem or history; or by maliciously causing another so to do; also by continually soliciting the chastity of a boy, girl, or woman of reputation; and by various other means, too numerous to be specified."

Sec. 2. "It is understood that a man may receive an injury, not only in his own person, but in that of children under his power, and also in the person of his wife; and therefore, if an injury be done to Seius's daughter, married to Titius, an action may be brought not only in the name of the daughter but in the name of her father or her husband; but, if the husband receive an injury, the wife is not allowed to institute a suit in his defence; for it is a maxim that wives may be defended by their husbands, but not husbands by their wives. And a father-in-law may bring an action for damages in the name of his son's wife, if her husband be under the power of his father."

Sec. 3. "An injury is never considered as done to a slave, but through him to the master; not however in the same manner as through a wife or child; as when some atrocious injury is done to the slave, manifestly in despite of the master; as if any one should cruelly beat the slave of another; in which case an action would lie; but, if a man should only give ill language to a slave, or strike him with his fist, the master is entitled to no action against him."

Sec. 9. "An injury is esteemed atrocious from the nature of the fact, as when a man is wounded by another, or beaten with a club—from the place, as when an injury is done in a public theatre, in an open market, or in the presence of the praetor—and sometimes from the rank of the person, as when a magistrate, or a senator, receives an injury from one of mean condition, a parent from his child, or a patron from his freedman; for these cases demand a heavier punishment than where an injury is done to a stranger or a person of low degree. Also the part injured may constitute an injury atrocious; as if a man should be wounded in his eye; but it is of little consequence whether such an injury be done to the father of a family, or to the son of a family; for such an injury will be considered as atrocious."

TITLE IV.

[illegible]

Sec. 1. An injury may be done not only by testing any weapon, but also by slanderous language by setting the words of a man as if he were a debtor, when the person who reads them will know that nothing was due to him; by writing a defamatory libel, [illegible] history or by maliciously causing another to do any of [illegible] ally soliciting the chastity of a boy, girl, or young [illegible] and by various other means, too numerous to be specified.

Sec. 2. It is understood that a man may receive an injury, not only in his own person, but in that of children under his power, and also in the person of his wife and therefore, if an injury be done to Caius's daughter, married to Titius, an action may be brought not only in the name of the daughter but in the name of her father or her husband [illegible], if the husband receive an injury, the wife is not allowed to institute a suit for redress for it is a suit that alone [illegible] to defraud by their husbands, but not injuries by their wives. But [illegible] a father may bring an action for [illegible] in the name of his son's wife, if her husband be under the power of his father.

Sec. 3. An injury is never considered as done to a slave, but through him to the master; not however in the same manner as through a wife or child; as some such atrocious injury is done to the slave, manifestly [illegible] dignity of the master as if any one should cruelly [illegible] slave of another to strike one on either [illegible] face, the injury is considered to be done to the master, [illegible] if a man should only give [illegible] a slave, or strike him with his fist, the matter is entitled to an action against him.

Sec. 4. An injury is sure not otherwise from the nature of the [illegible] as when a man is wounded by another, or beaten with a club—from the [illegible] or when an injury is done in a public theatre, in an [illegible] or in the presence of the praetor—and sometimes from the rank of the person, as when a magistrate, or a senator, receives an injury [illegible] from one of less condition. A person free all debts, or a person [illegible] from one of less condition. A person free all debts, or a person [illegible] from one of less condition. A person free all debts, or a person

## TITLE VI.

### DE ACTIONIBUS.

Sec. 10. "The praetor hath also given actions de peculio against fathers and masters, who although they are not legally bound by the contracts of their children and slaves, ought in equality to be bound to the extent of a peculium, which is, as it were, the patrimony and separate estate of a son, a daughter, or a slave."

Sec. 29. "The action rei uxoriae for the recovery of a marriage portion, was formerly numbered among the actions of good faith; but when, upon finding the action of stipulation to be more full and advantageous, we abrogated the action rei uxoriae, and transferred all its effects, with the addition of many other powers, to the action of stipulation given to recover marriage portions, we then not only thought that this action of stipulation, as far as it related to marriage portions, deserved to be numbered with actions of good faith, but we also added to it by implication, the effect of a mortgage; and we judged it proper that women, in whose sole behalf we have thus ordained, should be preferred to all other creditors by mortgage whenever they themselves sue for their marriage portions."

Sec. 37. "Also, if a woman bring suit for the restitution of her marriage portion, the man must be condemned to pay as far as he is able; i.e. as far as his ability or solvency will permit; therefore, if the portion demanded and the ability of the man be equal, he must be adjudged to satisfy the whole demand; but, if his ability be less than the claim, he must nevertheless be condemned to pay as much as he is able. But the claim of a woman may in this case be lessened by a retention; for the husband is permitted to retain an equivalent for whatever he hath necessarily expended upon the estate given with his wife as a marriage portion; but this will fully appear by a perusal of the digests, to which the reader is referred."

Sec. 38. "If any person sue his parent, patron, or partner, the plaintiff cannot obtain sentence for a greater sum than his adversary is able to pay; it is the same when a donor is sued on account of his donation."

## TITLE VII.

### QUOD CUM EO, QUI IN ALIENA POTESTATE EST, NEGO-

### TIUM GESTUM ESSE DICITUR.

Sec. 1a. "We have already mentioned the action which may be brought against the peculium, or separate estate of a son or slave; it is now necessary to speak of it more fully, and also of some other actions which are allowed to children and slaves against their parents and masters. But, as the law is almost the same, whether

TITLE VI.

DE ACTIONIBUS.

Sec. IC. "The pivator hath also given actions to special
general fixtures and matters, who although they are not legally
bound by the contracts of their children and slaves, ought in
equality to be bound to the extent of a peculium, which is,
it more, the pertinency and separate estate of a son, a daughter,
or a slave."

Sec. 2D. "The action rel.uerise for the recovery of a mar-
riage portion, was formerly annexed among the actions of good
faith; but when, upon finding the action of stipulation to be more
full and advantageous, we aforenoted the action rei uxoriæ, and
transferred all its effects, with the addition of many other powers,
to the action of stipulation; we thought fit to recover marriage portions, as
ther not only thereby that this action of stipulation, as for as it
related to marriage portions, deserved to be numbered with actions
of good faith, but we also added to it by implication, the effect
of a mortgage; and as judged it proper that women, in whose sole
behalf we have thus ordained, should be preferred to all other
creditors by mortgage whatever that themselves due for their mar-
riage portions."

Sec. 3". "Also, if a woman bring suit for the restitution of
her marriage portion, the one must be condemned to pay as far as he
is able; so far as his ability or solvency will permit thereto-
fore, if the portion demanded and the ability of the man be equal,
he must be adjudged to satisfy the whole demand; but, if his ability
be less than the claim, he must nevertheless be condemned to pay as
much as he is able. But the claim of a woman may in this case be
lessened by a reduction for the husband is entitled to retain as
equivalent for whatever he both necessarily expend upon the estate
given with his wife as a marriage portion; but this will fully ap-
pear, by a perusal of the digest, to which the reader is referred."

Sec. 3". "If any person use his power, action, or patron,
the plaintiff cannot obtain sentence for a greater sum than his
adversary is able to pay it to the same when a longer is said or
demand of his adversary."

TITLE VII.

QUOD CUM FILIO, QUI IN ALIENA POTESTATE SIT, NEGOTIUM

CUM PATRE SUO GESTUM.

Sec. 1". "We have already mentioned the actions which may be
brought against the peculium, or separate estate of a son or slave;
it is now necessary to speak of it more fully, and also of some
other actions which are allowed to children and slaves against their
parents and masters. But, as the one is almost the same, whether

an affair be transacted with a slave or with one who is under the power of his parent, to avoid prolixity we will treat only of slaves and their masters, leaving what we say of them to be understood also of parents and children under power; for whatever is peculiar to children and parents we shall point out separately."

Sec. 6. "What we have said, concerning a slave and his master, takes place equally in regard to children under power and their parents."

Sec. 7. "But children are, in some respects, particularly regarded by the Macedonian decree of the senate, which prohibits money to be lent them while under power of their parents; for creditors are not suffered to bring any action, either against the children, even after they are emancipated, or against their parents, who emancipated them. This caution was adopted by the senate, because young heirs, loaded with debts contracted for luxury, have laid snares against the lives of their parents."

## TITLE VIII.

### DE NOXALIBUS ACTIONIBUS.

Sec. 7. "The ancients indeed admitted this law of the forfeiture of the person, even in cases of children, whether male or female; but later times have rightly thought that such rigorous proceeding, ought to be exploded and it hath therefore passed wholly into disuse; for who could suffer a son, and more especially a daughter, to be delivered up as a forfeiture to a stranger? For in the case of a son, the punishment of the father would be greater than that of the son; and in the case of a daughter, the rules of modesty forbid the practice. It hath therefore prevailed that noxal actions should apply to slaves only; and we find it often laid down in the old books, that sons of a family may be sued for their own misdeeds."

## TITLE XIII.

### DE EXCEPTIONIBUS.

Sec. 11. "Dilatory exceptions may also be personal, as those against proctors, where a suitor employs a soldier or a woman to act for him; for soldiers are not permitted to act as proctors even in behalf of a father, a mother, or a wife, although they obtain the sanction of an imperial rescript; but they may superintend their own affairs, without offending against military discipline. But we have put a stop to the exceptions of infamy which were formerly made, both against proctors and their constituents, having observed them to be little practised, and fearing, lest by such altercations, an inquiry into the merits of causes should be retarded."

## TITLE XV.

### DE INTERDICTIS.

Sec. 1. "The first division of them is into prohibitory, restoratory, and exhibitory interdicts. Prohibitory are those by

lawyers publishing company inc.

## TITLE VIII.

### IN NEGATIVE ACTIONING.

Sec. 8. The sections indexed edited this law of the Territories of the person, even in cases of children, whether male or female, not later than twenty thought that such vigorous proceeding, ought to be applied and it has therefore proved really into limbo for who could suffer a sex, and more especially a daughter, to be lived up to a fortuitous to a stranger. For in the case of a man, the punishment of the father would be greater than that of the most proactive. It has therefore proved that moral actions should and in the case of a daughter, the value of society would be that case of a family may be used for their one standard."

## TITLE XIII.

### IN EXCEPTIONS.

Sec. 11. "Statutory exceptions may also be pursued, as those against proctors, where a suitor employs a solicitor or a woman to act for him for solicitors are not permitted to act as proctors even in family of a father, a mother, or a wife, although they obtain the exception of an imperial restraint that they may exercised their one effects, without offending against strictly discipline. But no have put a stop to the exceptions of infamy which more formerly made, to be little practised, and therefore, lest it such alterations, an foster against proctors and their connections. Having observed that inquiry into the events of causes should be retarded."

## TITLE XV.

### IN INJUNCTIONS.

Sec. 14. "The first violation of them is into prohibitory, reformatory, and obligatory injunctions. Prohibitory are those by

which the praetor forbids something to be done, as when he forbids force to be used against a lawful possessor; or against a person who is burying another, where he hath a right; or when he forbids an edifice to be raised in a sacred place; or hinders a work from being erected in a public river, or on the banks which may render it less navigable. The restoratory, directs something to be restored, as the possession of goods to the universal successor who has been kept out of possession by one who hath no right; or when the praetor commands possession to be restored to him who hath been forcibly ejected. And the exhibitory interdicts are those by which the praetor commands some exhibit to be made, as of a slave, for example, concerning whose liberty a cause is depending; or of a freeman from whom a patron would exact the service due to him; or of children to their parent, under whose power they are. Some nevertheless imagine, that interdicts can with propriety be only prohibitory, because the word interdicere signifies to denounce and prohibit;—and that the restoratory and exhibitory interdicts might more properly be called decrees; yet by usage they are all termed interdicts, because they are pronounced between two, (inter duos dicuntur,) the demandant and the possessor."

## TITLE XVI.

### DE PCENA TEMERE LITIGANTIUM.

Sec. 3. "All actions take their rise from that part of the praetor's edict, in which he treats de in jus vocando of calling parties into court; for the first step in matters of controversy, is to cite the adverse party to appear before the judge, who is to determine the cause. In the same part of the edict the praetor hath treated parents and patrons, and even the parents and children of patrons and patronesses, with so great respect that he does not suffer them to be called into judgment by their children or their freedmen until application hath been first made to him, and leave obtained; and, if any man presume to cite such person otherwise, he is subject to a penalty of fifty solidi."

## TITLE XVIII.

### DE PUBLICIS JUDICIIS.

Sec. 4. "The law Julia, for the suppression of adulteries, not only punishes with death those who violate the marriage bed of others, but those also, who commit acts of detestable lewdness with persons of their own sex. It also inflicts punishment upon all who are guilty of the crime called stuprum; that is, the debauching a virgin, or a widow of honest fame, without force. The punishment of this crime in persons of condition is the confiscation of a moiety of their possessions; offenders of low degree, undergo corporal chastisement with relegation."

Sec. 6. "The law Pompeia inflicts a new punishment upon those who commit parricide, the most execrable of all crimes. This law ordains that whoever, either publicly or privately, hastens the death of a parent or a child, or of any person comprized under the tye, or denomination of a parent, shall be punished as a parricide;

TITLE XVI.

IN PARENS PATRIÆ ALTIORATIUM.

Sec. 1. "All actions take their rise from that 'part' of the praetor's edict, in which he treats de in jus vocando of calling parties into court; for the first step in matters of controversy, is to cite the adverse party to appear before the judge, who is to determine the cause. In the same part of the edict the praetor both treats of parents and patrons, and even the parents and children of patrons and patronesses, with so great respect that he does not suffer them to be called into judgment by their children or their freedmen until application both been first made to him, and leave obtained; and, if any one presume to cite such person otherwise, he is subject to a penalty of fifty solidi."

TITLE XVII.

IN PUBLICIS JUDICIIS.

Sec. 1. "The law Julia, for the suppression of adulteries, not only punishes with death those who violate the marriage bed of others, but those also, who commit acts of detestable lewdness with persons of their own sex. It also inflicts punishment upon all who are guilty of the crime called stuprum; that is, the debauching a virgin, or a widow of honest fame, without force. The punishment of this crime is persons of condition is the confiscation of a moiety of their possessions; offenders of low degree, undergo corporal chastisement with roleyation."

Sec. 2. "The law Pompeia inflicts a new punishment upon those who commit parricide, the most execrable of all crimes. This law orains that whoever, either publicly or privately, bastons the head of a parent or a child, or of any person comprised under the tye, or denunciation of a parent, shall be punished as a parricide:

and he also, who hath advised, or been privy to the transaction, although a stranger. A criminal, in this case, is not put to death by the sword, by fire, nor by any ordinary punishment; the law directs that he shall be sewed up in a sack with a dog, a cock, a viper, and an ape, and, being put up in this horrid enclosure, shall be thrown either into the sea, or an adjacent river, according to the situation of the place where the punishment is inflicted; thus he is deprived of the very elements while living; so that his living body is denied the benefits of the air, and his dead body the use of the earth. But, if a man be guilty of the murder of any other person related to him, either by cognation or affinity, he is only subject to the punishment inflicted by the law Cornelia de sarcariis."

Sec. 8. "The law Julia, concerning public and private force, take place against all who use force, whether armed or unarmed; but, if proof be made of an armed force, the punishment is deportation by that law; and, if the force be not accompanied with arms, the penalty is confiscation of one-third part of the offender's goods; nevertheless, if a rape be committed upon a virgin, a widow, a nun, or upon any other person, both the ravishers and their accomplices are all equally subject to capital punishment, according to the decision of our constitution; from which more may be known of this subject."

lawbook exchange, ltd.

# THE

# DIGEST OF JUSTINIAN

## VOLUME I.

onicus publishing company, inc.

DIGEST OF JUSTINIAN.

FIRST BOOK.

V.

ON STATUS.

19 CELSUS (Digest 29) "When lawful marriage has taken place, the children follow the father; the child of random intercourse follows the mother."

22 THE SAME (Responsa 12) "Herennius Modestinus laid down that if a slavewoman is delivered of a child at a time when, by the terms of the donation by which she was acquired, she ought to have been manumitted already, then, seeing that the Imperial enactment makes her free at once, her child is freeborn."

24 ULPIANUS (On Sabinus 27) "This is a rule of nature: whoever is born out of lawful wedlock follows his mother, unless some special statute provides otherwise."

26 JULIANUS (Digest 69) "Unborn children are in almost every branch of the civil law regarded as already existing. They are allowed to take statutable inheritances; and if a woman with child is taken prisoner by the enemy, and a child is born, it comes under the law of postliminium, moreover it follows the condition of its father or its mother (as the case may be); lastly, if a slave-woman who is with child is stolen, then, although she should be delivered when in the hands of a bona fide purchaser, the child will be regarded as stolen goods, and consequently ownership in it will not be acquired by usus. Again, on the same principle, after the death of a patron, so long as a son of the deceased can possibly be born, a freedman is in the same legal position as one whose patron is living."

VI.

ON PERSONS sui juris AND alieni juris.

3 GAIUS (Institutes 1) "Again, a man has under his potestas any children that he has begotten in lawful wedlock: this rule of law is peculiar to Roman citizens."

4 ULPIANUS (Institutes 1) "A Roman citizen may be a paterfamilias or a filiusfamilias or a materfamilias or a filiafamilias. A pater-familias is a man who is in his own potestas, whether of mature age or not; a similar definition applies to a materfamilias; a filius-familias or filiafamilias is under the potestas of someone else. A child who is born from the union of me and my wife is under my potestas; and one who is born from the union of my son and his wife, in other words, my grandson or granddaughter, is equally under my potestas, so is my great-grandson or great-granddaughter, and so on of more remote descendants."

8 THE SAME (ibid. 26) "If the father is a lunatic, his children remain none the less under their father's potestas; the same rule applies to any paterfamilias who has children under his potestas. The right of potestas was established by custom, and a man cannot cease to have persons under his potestas except by the occurence of the regular circumstances by which children become free, consequently there can be no admissible doubt that in the above case the children remain subject to potestas. Accordingly, he will have in his potestas not only those children whom he begot before his lunacy began, but also such, if there be any, as were conceived when he was sane, but were born after he became a lunatic. Indeed if his wife should conceive at a time when he is a lunatic, it is a fair question whether his child will not come under his potestas by birth; a lunatic, it is true, cannot contract a marriage, but he can remain a party to a marriage already contracted; and this being the case, (it follows that) his son will be under his potestas. Similarly, if the wife is a lunatic, a child which she may have conceived previously will be born in (the husband's) potestas; and if it be conceived when she is a lunatic, but the husband is sane, there is no doubt that it will be born under potestas, since the marriage remains good. We may add that if both husband and wife are lunatics, and, that being the case, the wife conceives, the child will be born under the potestas of its father, some remnant of intention being assumed to remain in the parties in spite of their lunacy; since the marriage holds good where one party is a lunatic, it will do so equally where both are in that condition. 1. So true is it that a father who is a lunatic retains the right of potestas, that in fact the benefit of anything which the son gains is acquired by the father."

## IX.

## CONCERNING SENATORS.

8 THE SAME (Fideicommissa 6) "Women who are married to men of honourable rank (clarissimi) are included under the term honourable. Daughters of senators are not comprised under the expression honourable women (after marriage), except where they have found honourable husbands; husbands give honourable rank to their wives, but parents only do so to their daughters unless and until the latter marry plebeians; accordingly a (married) woman is 'honourable' only when she is the wife of a senator, or of any honourable man, or, if she has come to be separated from such a husband, has not married anyone else of lower rank."

9. PAPINIANUS (Responsa 4) "Where the daughter of a senator affects to marry a freedman, loss of rank on the part of her father does not make her a lawful wife; as (conversely,) the rank which a man has once communicated to his children will not be taken away by the fact of the father losing his status by removal from the senate."

## SECOND BOOK.

### IV.

### ON CITATION.

6 THE SAME (Sentences 1) "No one can cite his natural parents, the same unvarying tokens of respect are to be observed towards all parents."

### XIII.

### ON STATEMENT OF PARTICULARS AND DISCOVERY OF DOCUMENTS, ETC.

12 CALLISTRATUS (on the monitory Edict 1) "Women are held to be excluded from the functions of a banker, as that business is one for men."

## THIRD BOOK.

### II.

### ON THOSE WHO ARE MARKED WITH infamia.

10 THE SAME (on the Edict 8) "It is in accordance with the present practice that a widow should get leave from the Emperor to marry again within the prescribed period. 1. When a woman completes the period of mourning for her deceased husband, she incurs no censure for having been engaged in the meantime to marry again."

11 ULPIANUS (on the Edict 6) "Mourning for children or parents is no impediment to marriage. 1. Even where the deceased husband was someone for whom, by established custom, a woman ought not to observe mourning, still the widow cannot be given in marriage before the expiration of the statutable time; the praetor looks at the day on which mourning for a deceased husband would terminate, and the object of making it a practice to complete the period is to avoid confusion of blood. 2. Pomponius holds that a woman who bears a child within the prescribed time may at once give herself in marriage, which, I should say, is sound. 3. It is not the practice, so Neratius says, to observe mourning for enemies, or for persons condemned for perduellio (treason), or those who hang themselves, or lay violent hands on themselves from a bad conscience and not from weariness of life; still, if a widow, where the husband has died under any such circumstances, should give herself in marriage (within the period), she will be marked

with infamy. 4. A mark is also set on the man who takes to wife such a widow, that is, if he knows the fact; ignorance of law is not excused, but only ignorance of fact. A man who should make such a marriage by the order of one who has potestas over him is excused, and the mark is put on the person himself who suffers him to make the marriage. Both these rules are sound; the party who complied deserves indulgence, and the one who allowed him to make the marriage may fitly receive a mark of ignominy."

13 ULPIANUS (on the Edict 6) "How then, if the father did not give the son leave to marry, but ratified the marriage after it was made? Suppose for instance he was unaware orginally that the circumstances of the woman were such as described, but afterwards found it out: in this case he will not be marked, as the praetor looks at the time when the marriage took place. 1. Where a man contracts two betrothals on someone else's behalf, he is not marked, unless he concludes them on behalf of some man or woman whom he has under his potestas; of course it must be held that a man who allowed his son or daughter to contract a betrothal may be held to have in a way contracted it himself. 2. Where the praetor says, 'at the same time,' we must not take this to mean the actual betrothals being contracted at the same time, but to apply equally where the periods to any extent coincide. 3. Again if a woman is betrothed to one man and married to another she is punished by the rule given in the Edict. 4. And as it is the party's own act which entails the mark of infamy, it follows that, even where the woman with whom a man contracts marriage or betrothal is one whom he cannot marry legally, or cannot marry consistently with religious principle (fas), he will still be marked. 5. (The award of) a person made arbitrator by mutual compact does not lay a party under infamy, as such an award is not in every respect the same thing as a judgment. 6. As far as the question of infamy is concerned, it makes a great deal of difference whether in the case before the court the judge made his decision after a regular hearing, or something was uttered independently, in the latter kind of case no infamy is inflicted. 7. Where a penalty of undue severity is imposed beyond the terms of the statute, the character of the party is not affected; this has been enacted, and also laid down by responsum. Suppose for instance, the praeses should relegate a man who ought only to have been mulcted in a part of his property, the proper view to take is that by suffering so severe a sentence the accused person has compounded for the retention of his character, and accordingly he is not infamous. At the same time, if, in a case of furtum nec manifestum, the judge makes an order for payment of four times the value, then the extra penalty laid on the defendant is no doubt a grievance, as, where the furtum is not manifestum, he ought to have been sued for the double value only; still this fact does not prevent the loss of his character; whereas, if the penalty which the judge inflicted in excess had not been of a pecuniary kind, the party would be held to have compounded. 8. A charge of stellionatus imposes infamy on the party on whom judgment is passed, though this is not a subject for a publicum judicium."

15 ULPIANUS (on the Edict 8) "A woman is marked who gets an order for possession on behalf of an alleged unborn child on false pretences (per calumniam), that is, by declaring that she is with child,

16 PAULUS (on the Edict 8) when in reality she is not, or is with child by a man who was not her husband;

17 ULPIANUS (on the Edict 8) as a woman who deceives the praetor ought to be punished. But a woman who acts as above mentioned is only marked where she does so without being at the time subject to potestas."

18 GAIUS (on the provincial Edict 3) "Where a woman was under a delusion in the matter, she cannot be held to have been in possession on false pretences,

19 ULPIANUS (on the Edict 8) and no woman is marked save one as to whom it is judicially declared that she got the order for possession by means of false pretences. The law will apply equally to a father who procures by false pretences that a daughter whom he had under his potestas should get an order for possession on behalf of an alleged unborn child."

## III.

## ON "PROCURATORS" AND "DEFENSORS."

## ( AGENTS, WHETHER APPOINTED OR VOLUNTARY.)

41 PAULUS (on the Edict 9) "Women are sometimes allowed to sue on behalf of parents, on due cause shown, for instance, where the parents are prevented by illness or old age, and have no one to act on their behalf."

## V.

## ON negotia gesta (VOLUNTARY AGENCY).

48 PAPINIANUS (Questions 3) "If a brother, even without his sister's knowledge, by way of acting in her interest, stipulates with her husband for dos, he can be legally sued by her in an action on negotia gesta to compel him to release the husband."

## FOURTH BOOK.

## II.

## ACTS DONE THROUGH FEAR.

21 PAULUS (on the Edict 11) "Where a freedwoman after being guilty of ingratitude towards her patron, knows that this is the case, and, being thus in peril in respect of her status, gives or promises something to the patron, to avoid being reduced to slavery again, the Edict does not apply, because such a case of being put in fear is the woman's own act. 1. Where any act is done under intimidation, the praetor will not treat any lapse of time as a ground for upholding it. 2. Where the applicant delivered possession

of land which was not his own, the unit of which he will recover fourfold or the simple amount, as the case may be, with the proceeds, is not the value of the land but the value of the possession of it; the subject of valuation is whatever has to be restored, in short, what the applicant is kept out of, and what is, here, the bare possession with the produce. Pomponius agrees with this. 3. If a dos is promised under intimidation, I shall say that no obligation arises, there can be no doubt that such a promise of dos is the same as none at all. 4. If I am compelled through fear to give up a purchase or a locatio, it is worth considering whether the transaction is null and void, so that the original contract remains, or the case is to be treated like that of a formal release, on the ground that one cannot in such a case rely on any bona fide obligation, any such being lost and so ended; but the better opinion is that the case is like that of a formal release, consequently there is ground for a praetorian action. 5. If I am compelled by fear to enter upon an inheritance, I should say that I become heir, because, although I should have declined if I had had liberty of action, still, being compelled, I had the will to do it; however I ought to get an order of restitution from the praetor, and to be given the power to abstain. 6. If I repudiate an inheritance under compulsion, the praetor offers me two kinds of relief; he either allows utiles actiones in which I am put on the footing of heir, or else the action founded on putting in fear, so that it is open to me to adopt whichever course I choose."

## IV.

## ON PERSONS UNDER TWENTY-FIVE.

12 GAIUS (on the provincial Edict 4) "If a woman intervenes to make herself liable at the suit of a minor in the place of some third person, no action will be allowed the minor against the woman, he will, in fact, like anyone else, be barred by an exceptio, for the reason that the ordinary law gives him restitution in respect of his right of action against the original debtor. This is on the assumption that the original debtor is solvent, otherwise the woman cannot avail herself of the benefit of the Senatusconsultum (Velleianum)."

31 THE SAME (Responsa 9) "Where a woman, after becoming heir to a deceased person, got restitution on the ground of her youth in order to enable her to decline the inheritance, I gave it as my opinion that any slaves forming part of the estate whom he had in due form manumitted in pursuance of a fideicommissum would retain their freedom; they would not, I added, be compelled to pay twenty aurei as the price of retaining it, as they had acquired freedom in a thoroughly legal way. The fact is, that even if some of the creditors had recovered their money from her before she got the order of restitution, no claim on the part of the others against those so receiving payment, with a view to having the money shared amongst them, would be held admissible."

48 PAULUS (Sentences 1) "If a minor gets restitution in integrum in respect of some suretyship which he undertook or a mandate which he gave, this does not release the principal debtor. 1. A minor sells a female slave; if the purchaser manumits her, the minor cannot thereupon get restitution in integrum, but he will have an action against the purchaser for the amount of his interest. 2. Where a woman under the age of twenty-five finds her position made the worse by an agreement to give dos, and she has in fact entered into an agreement such as no woman of full age would ever enter into, which she therefore wishes to rescind, her application ought to be entertained."

(2) PRECEDENT UNDER TARIFF-FIVE.

V.

ON capitis minutio.

2 ULPIANUS (on the Edict 12) "This Edict refers to such cases of capitis deminutio as occur without effecting a man's right of citizenship; when a capitis deminutio occurs which involves loss of citizenship or loss of liberty, the Edict will not apply, and the person concerned cannot be sued in any kind of action; of course an action will be allowed against persons into whose hands the property of those in question has passed. 1. The Praetor says, 'Whatsoever man or woman, after becoming party to any contract or transaction, shall appear to have suffered capitis deminutio, I will allow an action against him or her, just as if such capitis deminutio had not taken place.' 2. Persons who suffer capitis deminutio will still remain subject to a natural obligation in respect of such grounds as occurred before the capitis deminutio; but if the grounds occurred afterwards, it is the other party's own follow for entering into a contract with the person in question, so far as the words of this Edict are concerned. There are cases, however, in which an action will be allowed where a contract was made with a person after he suffered capitis deminutio; and, in fact, if it is a case of arrogation, no difficulty arises, as the party can contract an obligation just as much as any (other) filiusfamilias. 3. No one can get rid of his delicts, in spite of undergoing capitis minutio. 4. Where a man arrogates his debtor, the right of action against the debtor will not be renewed on the latter becoming sui juris. 5. The right of action above given is not subject to limitation, and the right and the liability pass to the respective heirs."

8 GAIUS (on the provincial Edict 4) "Obligations, the fulfilment of which is regarded as a matter of natural law, it is obvious cannot be avoided by capitis deminutio, as no civil principle can entail the destruction of natural rights. Accordingly the right of action for dos, which is framed with express reference to principles of right and justice, will still hold good even after a capitis deminutio;

9 PAULUS (on the Edict 11) so that if a woman comes to be emancipated, she may still one day bring the action."

FIFTH BOOK.

I

ON TRIALS AT LAW: AS TO WHERE A MAN OUGHT TO TAKE PROCEEDINGS OR BE SUED.

42 THE SAME (Questions 24) "If the wife of a legate is divorced from her husband at Rome, the opinion has been given that, (if she sues for dos), the husband must be ready to defend the action in Rome."

65 THE SAME (on the Edict 34) "A woman ought to sue for her dos where her husband's home was, not where the written assurance of dos was made; the contract of dos is not of such a kind that regard should be had to the place where the assurance was executed so much to the place which the woman herself would have naturally made her home in consequence of the marriage."

## II

## ON INOFFICIOUS TESTAMENTS.

5 MARCELLUS (Digest 3) "Even those who do not descend from the testator in the male line have a right to take proceedings, as they can be taken on the testament of a mother, and the application is very often successful. The point of the term inofficious, as already said, is this,—the parties applying show that they were passed over, or, it may be, even got rid of by disherison, without deserving it, and consequently, unduly; and the colour put on the matter, when it is argued in Court, is that the testator appears not to have been in his right mind when he framed such an unjust testament."

16 THE SAME (Responsa 2) "Where a son has already taken proceedings in the matter of an alleged inofficious testament of his mother against his brother who was appointed heir for a part, and he was successful, a daughter (sister of applicant) who takes no proceedings, or, at any rate, is not successful in any, cannot take a share as statutable heir along with her brother. 1. A father, in pursuance of the right founded on emancipation, got an order for possession contra tabulas of his son's property, and actually took possession; after this, a daughter of the deceased son, who had been disinherited by her father, carried through on good grounds an action for inofficiousness: in this case the order for possession which the father got falls to the ground; because in the former proceedings the subject of the inquiry was the legal position of the father, not the legal character of the testament; consequently the whole inheritance must be made good to the daughter with mesne profits."

19 THE SAME (Questions 2) "A mother at her death appointed a stranger heir for three-quarters, and one daughter for a quarter, passing over a second daughter: thereupon the latter brought the plaint for inofficiousness and was successful. I wish to ask what relief can be had by the daughter who was named heir. My answer was this:—The daughter who was passed over ought to sue to recover whatever she would have had if her mother had died intestate. Hereupon it may be said that the daughter so omitted, if she sues for the whole inheritance ab intestato and gets judgment in her favour, will in fact have the entire and exclusive succession, just as if the other had declined and statutable inheritance. However, it is not admissible that the daughter who was passed over should, if she brings the plaint for inofficiousness, be given a hearing in opposition to her sister; and another thing to be said is that the sister who has made entry in pursuance of a testament is not on the same footing as one who declines to take up the succession; accordingly the sister (who was passed over) must sue to recover half from the stranger, and it may be safely maintained that by such suit she will recover the full half, on the ground that half the whole estate is her proper share. It would follow from this that the testament is not upset altogether, but the testatrix is made intestate to a certain extent, even though the Court set aside her last will on the assumed ground of insanity. The fact is, that if anyone holds that where

II

the daughter succeeds on the plaint the whole testament is upset, it must be maintained that her sister, who was appointed heir, has as good a right as she to enter on the inheritance, considering that one who entered in pursuance of a testament which she thought was valid cannot be regarded as declining the succession ab intestato, which she did not know to be open to her; we know that even where persons are aware of their legal rights, still they do not lose them because they choose to go upon some other claim which they believe to be good. This is exemplified in the case of a patron who adopts a deceased freedman's will in consequence of a mistaken opinion which he has formed of it, as such a one is not regarded as having declined the bonorum possessio contra tabulas. It is clear from this that the daughter who was passed over cannot sue to recover the whole estate, seeing that, even if the testament is upset, the right of the sister who was appointed heir to enter on the inheritance herself is unimpaired."

28 PAULUS (on Septemviral cases) "In a case where a mother was informed falsely that her son, who was a soldier, was dead, and she thereupon appointed other persons heirs, the Divine Hadrian decreed that the inheritance should belong to the son, on the understanding that manumissions and legacies were to be maintained. Particular attention should be paid in this case to the additional clause about manumissions and legacies; as where a testament is made out to be inofficious, none of its provisions are valid."

29 ULPIANUS (Opinions 5) "Where the legatees suspect that the persons nominated heirs and the party who is taking proceedings to set aside the testament as inofficious are in collusion, it is a settled rule that the legatees have a right to appear and argue in support of the will of the deceased; and the same persons have in fact a right to appeal, if judgment is given against the testament. 1. Even bastard children are allowed to allege inofficiousness in respect of the testament of their mother. 2. Where the impeachment of a testament for inofficiousness has been set on foot, then, although the matter should be settled by a compromise, nevertheless the testamentary manumissions and the legacies, to the extent sanctioned (as to the latter) by the lex Falcidia, retain their validity. 3. As a woman can never adopt a son without the leave of the Emperor, it follows that a man cannot bring proceedings to set aside for inofficiousness the testament of a woman whom he falsely supposed to be his adoptive mother. 4. Proceedings for inofficiousness ought to be brought in the province in which the persons nominated heirs have thier home."

## III

## ON THE ACTION FOR RECOVERY OF AN INHERITANCE.

1 GAIUS (on the provincial Edict 6) "A man may have a right to an inheritance either by the old law or the new. By the old, in virtue of the Twelve Tables or of a testament made in due form of law,

2 ULPIANUS (on the Edict 15) whether the party is made heir directly by his own act or through someone else,

3 GAIUS (on the provincial Edict 6) for example, where a man has some person under his potestas, and, that person being appointed heir, he orders him to enter on the inheritance; and we may add that if a man is made heir to Titius where the latter has himself become heir to Seius, then, just as he may lay claim in an action at law

to the inheritance of Titius, so he may to that of Seius too. A man may also be heir on intestacy, as where, let us say, he is suus heres to the deceased, or he is an agnate, or he manumitted the deceased, or his paterfamilias manumitted him. Persons become heirs by the new law whenever they are entitled to the inheritance in virtue of a decree of the senate or of an Imperial constitution."

13. THE SAME (on the Edict 15) "In short, one who is unable to allege any title to possess at all; so thieves and robbers are liable to the petitio. 1. Moreover, this title, pro possessore. is (one that may be) attached and, so to speak, fastened to any other title. For instance, it may be attached (haeret) to the title of pro emptore (title as purchaser); if I buy from a lunatic whom I know to be such, I possess as possessor. Again, the question is asked in connexion with the title pro donato (as donee) whether a person who possesses upon that title does so pro possessore, for instance, a husband or wife; and Julianus's opinion is generally adopted that he or she does possess pro possessore, consequently he or she will be liable to the petitio hereditatis. Similarly the title pro dote (by right of dower) may take the form of possession pro possessore, as, for example, where I marry a girl under twelve years of age and accept something by way of dos, knowing the girl's age. Again, if a legacy is paid me on grounds to my knowledge false, I shall certainly possess pro possessore. 2. A man who hands over an inheritance (in pursuance of a fideicommissum) cannot be liable to a petitio hereditatis, unless he did it dishonestly, that is, he knew (it was not to be done) and yet he did it; even past dishonestly is material in a petitio hereditatis, the view being that the party dishonestly gave up possession. 3. Neratius says (Parchments 6) that the petitio hereditatis can be brought against an heir, even where he is unaware that the deceased himself was possessing as heir or as possessor. In b. 7 he says that the rule is the same even where the heir believed that the things (demanded) were part of some inheritance which was open to him. 4. How if a person purchases an inheritance? ought an utilis petitio hereditatis to be allowed against him, to prevent his being worried by a number of separate actions? Of course the vendor is liable; but suppose no vendor is to be found, or he sold for a small sum of money and was a bona fide possessor; can the purchaser be gotten hold of? Here Gaius Cassius thinks an utilis actio must be allowed. 5. The same rule holds where the heir, being told to sell the inheritance for a small sum, sells it to Titius; Papinianus believes the rule to be that the action is allowed against the fideicommissary; as it is better that the heir should not be sued where he only received some very trifling price; 6. and the same rule applies where the heir was requested to hand over the inheritance, retaining a specified quantity. Of course, if he was requested to hand over the inheritance on receiving specified amount,—such is the opinion of Papinianus,—the petitio hereditatis cannot be brought against the heir, because what the heir received by way of fulfilling a condition is not possessed by him as heir. However, Sabinus gives an opposite opinion in the case of a statuliber; and this is the truer view, as the money received from a statuliber is part of the inheritance. 7. The above rule applies also where the heir merely retains the profits arising from the inheritance, in this case too he is liable to the petitio hereditatis. 8. If a man buys an inheritance to which someone else is entitled, with knowledge of the fact, he possesses, so to speak, as possessor, and thereupon some hold that he may be sued in a petitio hereditatis; this opinion, however, I do not think is correct, as no one is a plunderer who pays a price; however, being the purchaser of a single collective estate (universitas), he is liable to an utilis actio. 9. Again, where a man buys an inheritance for it, it is perfectly just that there should be an utilis actio allowed against him. 10. The statement is made in Marcellus (Dig. 4), that if a woman gives an inheritance as a dos, the

to the inheritance of Titius, or he may go to that of Seius too. A man may also be heir on intestacy, as where, let us say, he is sole heir to the deceased, or to his agnate, or to emancipated the deceased, or his paterfamilias emancipated him. Persons become heirs by the law whenever they are entitled to the inheritance in virtue of a decree of the senate or of an Imperial constitution."

13. THE BANK (on the Edict 13) "In short, one who is unable to allege any title to possess at all; so thieves and robbers are liable to the petitio. I. Moreover, this title, pro possessore, is (one that may be) attended and, so to speak, fastened to any other title, for instance, it may be attached (buried) to the title of pro emptore (title as purchaser); if I buy from a lunatic whom I know to be such, I possess as possessor. Again, the question is asked in connexion with the title pro donato (as donee) whether a person who possesses upon that title does so pro possessore, for instance, a husband or wife; and Julianus's opinion is generally adopted that he or she does possess pro possessore, consequently he or she will be liable to the petitio hereditatis. Similarly the title pro dote (by right of dower) may take this form of possession pro possessore, as, for example, where I marry a girl under twelve years of age and accept something by way of dos, knowing the girl's age. Again, if a legacy is paid me on account by my knowledge (sciens), I shall certainly possess pro possessore, 2. A man who hands over an inheritance (in pursuance of a fideicommissum) cannot be liable to a petitio hereditatis, unless he did it dishonestly, that is, he knew (it was not to be done) and yet he did it; even part dishonestly is material in a petitio hereditatis, the view being that the party dishonestly gave up possession. 3. Hortius says (Procemeta 6) that the petitio hereditatis can be brought against an heir, even where he is unaware that the deceased himself was possessing an inheritance which was open to him. 4. Now if a person purchase an inheritance ought an utilis petitio hereditatis to be allowed against him, to prevent his being worried by a number of separate actions? Of course the vendor is liable; but anyhow he vendor is to be found, or be sold for a small sum of money and be a bona fide possessor; and the purchaser is rotten half off. Here Sextus Caecina thinks an utilis actio must be allowed. 5. The same rule holds where the heir being told to sell the inheritance for a small sum, sells it to Titius; Papinianus believes the rule to be that the action is allowed against the fideicommissary as it is better that the heir should not be mad where he only received some very trifling price; 6. and the same rule applies where the heir was requested to hand over the inheritance, retaining a specified quantity. Of course, if he was requested to hand over the inheritance on receiving specified amount,—such is the opinion of Papinianus,—the petitio hereditatis cannot be brought against the heir, because what the heir received by way of fulfilling a condition is not possessed by him as heir. However, Sabinus gives an opposite opinion in the case of a stipulator and this is the truer view, as the money received from a stipulator is part of the inheritance. 7. The above rule applies also where the heir merely retains the profits arising from the inheritance, in this case too he is liable to the petitio hereditatis. 8. If a man has an inheritance to which someone else is entitled, with knowledge of the fact, be possessor, so to speak, as possessor, and therefore some hold that he may be sued in a petitio hereditatis; this opinion, however, I do not think is correct, as no one is a plunderer who pays a price; however, failed the purchaser of a single collective estate (universitas), he is liable to an utilis actio. 9. Again, where a man has an inheritance for 15, it is perfectly just that there should be an utilis actio allowed against him. 10. The statement is made in Marcellus (Dig. 4), that if a woman given an inheritance as a dos, the

husband is in possession of the inheritance by right of dower (pro dote), but he is liable to an utilis petitio hereditatis for recovery of it; Marcellus however, adds that the woman herself is liable to a direct action, especially if a divorce has already taken place. 11. It is further settled that the heir of a deceased possessor is liable to a petitio hereditatis in respect even of such things as the deceased possessed as purchaser, on the ground that the heir possess 'as heir,' although he is beyond doubt equally liable to the suit in respect of things which the deceased possessed 'as heir' or 'as possessor.' 12. Where a man is in possession of an inheritance on behalf of someone who is absent, it being uncertain whether that person will ratify his action or not, I should say that he can be called upon to defend the petitio hereditatis on behalf of such absent person, but that he is certainly not so liable on his own account, because a man cannot be held to possess as heir or as possessor, who possesses as representing another; unless indeed it should be said that, inasmuch as the principal does not ratify, therefore the procurator is, so to speak, a plunderer; on that view he can be held liable on his own account. 13. The petitio hereditatis is not good simply against a man who possesses something or other which formed part of the inheritance; even if he possesses nothing, it is a fair question whether, by volunteering to defend the suit, though he does not possess, he does not make himself liable. Celsus tells us (Dig. 4) that he is liable on the ground of fraud, as a man who volunteers to defend the petition acts fraudulently; and Marcellus expresses his approval of this opinion in general terms, in commenting on Julianus; everyone, he says, who volunteers to defend a suit for recovery of the inheritance is liable just as if he were in possession. 14. Again, where a man uses fraud so as to avoid being in possession, he will be liable to a petitio hereditatis. But where I lose possession with fraudulent intent, and then another acquires it who is prepared to stand a trial, Marcellus (Dig.4) discusses the question whether thereupon, any assessment of damages does not become null and void as against the party so ceasing to possess, and, on the whole, he says that it does, unless the party who sues has an interest in its being held otherwise; but at any rate, he says, there is no doubt that the assessment becomes void if the party acquiring possession is prepared to hand over the property. But, if the party who went out of possession with dolus is sued first, this will not discharge the one who possesses. 15. (The petitio hereditatis may) also (be brought) against a debtor to the estate, on the ground that he possesses (withholds) a right; it is settled that the petitio may be brought against 'possessors' of a right;

27 ULPIANUS (on the Edict 15). The children of female slaves and the children of their female children are not regarded as profits, because it is not a usual thing for female slaves to be procured with a view to the breeding of children, still such children go to increase the inheritance; and there is no doubt, seeing that they all fall into the estate, that the possessor is bound to hand them over, supposing that he is in possession of them, or that, after the petitio was brought, he fraudulently contrived to avoid being in possession. 1. Again, rents which are collected from leasees of buildings will be comprised in the petitio hereditatis, even where the tenement leased is a brothel: there are brothels kept on the estates of a great many respectable proprietors."

[illegible]

## IV.

### ON SUITS FOR PART OF AN INHERITANCE.

3 PAULUS (on Plautius 17) "The old lawyers had so much consideration for an unborn child which would be free on its birth (libero ventri) that they kept for it all its possible rights unimpaired against the day of its birth. We see an instance of this in the law of succession, as those persons who are in a more remote degree of relationship to the deceased than the unborn child, are not entitled. so long as it is uncertain whether there will be a child born or not. Where, however, the others are related to the deceased in the same degree as the unborn child, then the question has been raised, how much of, the inheritance ought to be kept in suspense, on the ground that it was impossible for them to tell how many children might be born. There are, in fact, so many various and incredible stories told in connexion with this subject that they are generally set down for fiction. It is related that a married woman had four daughters at a birth, again, some authors of repute have left it on record that a Pepoponnesian woman five times had four children at birth, and that many Egyptian women have borne seven children at one time. We have all heard of the three twin-brothers Horatii, all senators, girt for battle; and Laelius tells us that he saw on the Palatine a free woman who was brought from Alexandria to be shown to Hadrian, with five children, four of whom, so he says, she was reported to have brought forth on the same occasion, and the fifth, forty days later. What is to be said then? The legal authorities, very well deserving the name of 'prudentes,' have adopted a kind of middle course, viz. that of taking into consideration what may happen with tolerable frequency; in other words, inasmuch as it was possible that three children should be born on one occasion, they gave a fourth part to the existing son; what comes once or twice, as Theophratus says, lawyers do not heed, consequently, even if, as a matter of fact, the mother is destined to have only one child eventually, the existing son will be heir in the meantime, not to the extent of half but of a quarter:

5 PAULUS (on Palutius 17) One thing more should be understood, that if the woman is not really with child at all, but is thought to be so, the son is already sole heir, although he does not know that he is sole heir. 1. A similar rule applies in the case of an outsider, where he is appointed heir for a definite share, and all posthumous children to the rest. But if the appointment of heirs should be as follows, 'All children born to me and (with them) Lucius Titius are to be heirs in equal shares,' there is ground for doubt whether Lucius Titius is not unable to enter, just as a man would be who did not know what was his share under a testament. However, the most convenient rule is that a man who does not know how much his share is should be able to enter, if he is not unaware of whatever else there is that he ought to know."

# SIXTH BOOK.

## I

## ON SPECIFIC VINDICATIONS.

65 THE SAME (Responsa 2) "A man who purchased land from one who was not the owner will not be compelled, if he raises an exceptio doli, to hand over the land to the true owner, save on the terms of getting back any money which he may have paid to a creditor of the owner who had taken the land in pledge for his debt, as well as the balance of interest for the intermediate period, where, that is, such interest exceeds the amount of the profits which he received before the trial; as these profits can in justice only be set off against later interest, on the same principle as that applying to money spent on improvements. 1. Where a man allowed his daughter a female slave, not by way of dos, but as part of her peculium, then, if he does not bequeath peculium to the daughter by way of legacy, it follows that the woman is one of the slaves comprised in the assets of the deceased. If however the father disinherited his daughter in consideration of her dos and peculium, and gave that express reason for leaving her nothing by testament, or for leaving her so much the less, the daughter will have a sufficient defence (to an action by the heir) in her father's intention."

77 ULPIANUS (on the Edict 17) "A woman made a present by letter to a man, who was not her husband, of a piece of land, and then hired the same land from him: (I opined) that it might plausibly be held that the man had a right of action in rem for the land, on the ground that he had acquired possession of it through the woman herself as his tenant in occupation. Part of the case was that he had in fact been on the land which was given him at the very time when the letter was dispatched; and this circumstance alone was enough to constitute transfer of possession, even if there had been no hiring in the question."

## II

## ON THE PUBLICIAN ACTION in rem.

11 ULPIANUS (on the Edict 16) "If I have purchased something, and the thing is delivered to another at my request, then, according to a rescript of the present Emperor, Severus, the latter party will have a right to ask for the Publician action. 1. If an action is brought for a usufruct duly delivered, the Publician action is allowed; also where servitudes of urban estates are created by delivery or by sufference (prescription), for example, suppose a man has allowed a water-course to be made through his house; also where rustic servitudes are similarly created, as in their case too there is no doubt that delivery and sufference must be allowed to produce their respective effects. 2. Where the child of a stolen slave woman was conceived at a time when the woman was in the possession of a bona fide purchaser, it can be recovered by this action, even though such child itself has not been in the possession of the purchaser; but the heir of the party who stole the woman cannot bring the action, because he succeeds to the bad title of the deceased

(i.e. the thief). 3. Sometimes however, even where the mother who was stolen was not sold, but was given to me for nothing, without my knowing of the theft, and she conceived and bore a child while in my possession, I have a right to a Publician action to recover the child, so Julianus says, provided that at the time of which I bring the action I am unaware that the mother was stolen. 4. The same author, Julianus, gives the general rule that under whatever circumstances I could acquire the mother by usus, if she were not stolen property, I can under the same circumstances acquire the child by usus, if I was unaware that the mother was stolen property; so that in all (such) cases I shall have the Publician action. 5. The same rule holds in the case of the child of a female child of a slave woman, and also in the case of a child which was not born, but was brought into the world by excision after the death of the mother, so Pomponius says (b. 40). 6. The same writer says that, where a house was purchased, if the house is destroyed, any accessions to it can be recovered by the action under discussion. 7. Any accession made to land by alluvion takes the legal implications of the principal thing to which it accedes; consequently, where the land itself cannot be recovered by a Publician action, neither can the accession in question, but where it can, then (the action embraces) the portion which accrued by alluvion, and this we read in Pomponius. 8. The same writer adds, that if it is desired to sue for missing portions of a status that was purchased, a similar action will serve. 9. He also proceeds to lay down that if I buy a piece of vacant ground and build a block of houses, on it, I can very properly use the Publician action. 10. Again, so he says, if I built such a block and the whole becomes a piece of vacant ground, I can similarly use the Publician action."

12 PAULUS (on the Edict 19) "In a case where a man made a present of a slave to a woman to whom he was brtrothed, and, before ownership in the slave was acquired by usus, he received him back again by way of dos, it was laid down in a rescript of the Divine Pius that, should the parties be divorced, the slave ought to be handed over to the woman; as the gift was between a betrothed man and woman, and so was valid. Accordingly the woman will be allowed an exceptio if she is in possession and the Publician action if she should have lost possession, whether (in the latter case) the person in possession should be a stranger or the donor. 1. When an inheritance is handed over to anyone in pursuance of the Trebellian Senatusconsultum, he can have the Publician action, even though he should not yet have acquired possession. 2. In lands held on perpetual lease (praedia vectigalia), and in other lands which are not subject to usucapio, the Publician action is allowed, if it should happen that such land is delivered to one who takes it bona fide. 3. The same rule holds equally where I purchase bona fide from one who is not owner, a block of chambers which goes with the surface. 4. In the case of a thing of such a kind that some statute or imperial enactment prohibits a transfer of it, the Publician action is not available; in such cases the praetor gives no assistance to any one, lest he should be transgressing a statute. 5. A Publician action may be had even to recover a slave-child under the age of a year. 6. A man can employ the Publician action where the subject-matter of his suit is a share in something. 7. Indeed, even a man who has been in possession for a single moment might perfectly well proceed by means of this action."

# THE

# DIGEST OF JUSTINIAN

## VOLUME II.

# DIGEST OF JUSTINIAN.

## SEVENTH BOOK.

### I

46 PAULUS (Extracts from Paultius 9) "In a testament a stranger is appointed heir, an emancipated son is passed over, and the ownership (in the whole estate) is bequeathed to the mother of the testator, with a reservation of the usufruct; in this case, if the bonorum possessio contra tabulas is sued out, the full ownership must, in deference to filial duty, be given to the mother. 1. Where the testator orders that his heir shall repair a block of chambers in which he bequeaths the usufruct, the usufructuary can bring an action on the testament to compel the heir to execute the repairs."

58 SCAEVOLA (Responsa 3) "A woman who had a usufruct in land died in the month of December, all the produce procurable from the land having been already carried by the tenants in the month of October. Hereupon the question arose whether rent ought to be paid to the heir of the usufructuary, although she herself died before the first of March, which was the day on which rents became due, or it should be apportioned between the heir of the usufructuary and the municipality (res publica), to which the ownership was bequeathed. I replied that the municipality had no right of action against the tenant, but that, upon the facts as stated, the heir of the usufructuary would have a right to receive the whole rent on the regular day. 1. 'I give and bequeath to Sempronius a sixth part of the produce of the crops of cabbage and leeks which I have in the field of the Farrarii.' The question is whether these words can be held to amount to a bequest of the usufruct. My answer was:— 'No, not of the usufruct, but of the particular portion of the produce gathered which was mentioned in the bequest.' 2. It was further asked, assuming that it was not a case of usufruct, whether the bequest was one of the sixth part of the produce for every successive year. I answered that it must be held to be left for every year, unless the contrary were expressly proved by the heir."

### II.

### ON ACCRUAL OF USUFRUCT.

8 ULPIANUS (on Sabinus 17) "If a usufruct is bequeathed to a woman 'with her children,' then, if she lose her children, she has the usufruct; on the other hand, if the mother herself dies, still her children have the usufruct by the law of accrual. Julianus himself says (Dig. 30) that we must adopt the same construction in the case of a testator appointing heirs his children only, even where he does not name them as legatees, but only desires to make it clear that his wish is that the mother's enjoyment should be one in which she has her children associated with her. Here, however, Pomponius asks the question, 'How if the heirs are children and outsiders mixed up?' To this he says the sons (sic) must be held to be legatees, and, conversely, if his desire was that the children in question should be associated with their mother in the enjoyment, the proper rule is that the mother must be regarded as a legatee, and thereupon the legal result will be in all respects similar to that in the other case."

## IV.

### THE WAYS IN WHICH USUFRUCT OR USUS IS LOST.

22 POMPONIUS (on Quintus Mucius 6) "If the usus of a house is bequeathed to a woman, and she goes beyond seas and is absent for the time which sufficies by law for the loss of the usus, but her husband uses the house, then there is nothing to prevent the usus being retained, just as if the woman had left her slaves at the house and herself stayed abroad. Still more strongly will the corresponding rule apply where a husband leaves his wife in the house in a case in which the usus of the house was bequeathed to the husband himself."

## VIII.

### ON USUS AND HABITATIO.

2 ULPIANUS (on Sabinus 17) "When the usus is left a man he can use, but he cannot take the produce. Let us consider some cases in detail. 1. The usus of a house, say, is left to the husband or to the wife. If it is to the husband, he can live in the house, and that not (merely) by himself, but with his slaves too. Whether he can have his freedmen there also was once a matter of question, but Celsus says that he can have his freedmen, and that he may also take in a guest. This is said by Celsus in his Digest (b. 18), and the same opinion is supported by Tubero. I remember that in Labeo, in the book called Posteriores, the question is discussed whether he can go so far as to take in a lodger, and Labeo says that a man who lives in the house himself can take in a lodger; he also says he can take in guests as well as his freedmen

3 PAULUS (on Vitellius 3) and clients,

4 ULPIANUS (on Sabinus 17) but that even such persons as these must not occupy the house without him. According however to a note by Proculus, dealing with the subject of lodgers, a person cannot be properly called a lodger (inquilinus) when he lives with the other. It follows from the above that, even if the usuary receives a rent, still, as long as he is occupying the house himself, this is not to be grudged him: suppose, for instance, that a man of inferior means has had left him the usus of such a spacious house that he is content with a small portion of it. We may add that the usuary may have with him such persons as he has to serve him in the place of slaves, though they should be in fact free or the slaves of another man. 1. If the usus is left to a woman, then, as Quintus Mucius was the first to allow, she can have her husband living with her, because otherwise, if she chose to make use of the house, she would have to live unmarried. That, to take the converse case, a wife may live with her husband, (if the usus is his,) was never a matter of question. Suppose then the usus is bequeathed to a widow, would such a woman, if she contracted a second marriage after the usus was created, be at liberty to have her husband living with her? The true rule is, as Pomponius (b. 5) and Papinianus (Questions 19) agree, that she can have her husband to live with her, even if she married after the usus is created. Pomponius goes further and says she can have her father-in-law too."

THE MAYS IN WHICH HUSBAND OR WIFE IS LOST.

POMPONIUS (*In Quintus Mucius 6*) "If the wife of a house is deported to a room, and she goes beyond-seas and is absent for the time which suffices by law for the loss of the vote, but her husband votes the house, then there is nothing to prevent the vote being restored, just as if the room had left her slaves of the house and herself stayed abroad. Still more strongly will the opposite rule apply where a husband leaves his wife in the house in a case in which the vote of the house was deported to the husband himself."

VIII.

OF VOTES ARE MASCULINE.

3 ULPIANUS (*On Sabinus 17*) "When the vote is left a man by one vote, but he cannot take the produce. Let us consider some cases in detail. If the vote of a house, say, is left to the husband or to the wife. If it is to the husband, he can live in the house, and not (merely) by himself, but with his slave's son. Whether he can have his freedom there also was a matter of question, but Celsus says that he can have his freedom, and that he may also take in a guest. This is said by Celsus in his Digest (9, 10), and the same opinion is supported by Tubero. I remember that in Lucius, in the book called Posterior, the question is discussed whether he can take in guests as well as his freedmen."

4 PAULUS (*On Vitellius 3*) "And clients."

4 ULPIANUS (*On Sabinus 17*) "But that even such persons as these must not occupy the house without him. According however to a rule by Proculus, dealing with the subject of lodgers, a person cannot properly collect a lodger (inquilinus) when he lives with the other. It follows from the above that, even if the vote receives a rent, still, as long as he is occupying the house himself, this is not to be regarded that suppose, for instance, that a man of lower means has had left him the vote of such a precious house that he is content with a small portion of it. He may add that the vote may have with his own persons as he has to serve him in the place of slaves, though they should be in fact free or the slaves of another man. If the vote is left to a woman, then, as Quintus Mucius was the first to allow, she can have her husband living with her, because otherwise, if she chose to make use of the house, she would have to live unmarried. That, to take the converse case, a wife may live with her husband, (if the vote is his,) was never a matter of question. Suppose then the vote is bequeathed to a slave, could such a woman, if she contracted a second marriage after the vote was created, be at liberty to have her husband living with her? The true rule is, as Pegasus (*In 8*) and Papinianus (*Questions 10*) agree, that she can have her husband to live with her, only if she survived after the vote is created. Papinianus puts further and says she can have her freedmen-in too."

5 PAULUS (on Sabinus 3) "Indeed the father-in-law can have his daughter-in-law to live with him; at any rate if her husband is there too."

6 ULPIANUS (on Sabinus 17) "A woman may have living with her not only her husband but her children and freedmen or freedwomen, also her parents: Aristo himself makes a note on Sabinus to this effect. In fact we must go so far as to say that women can admit the same kind of persons as men can;

7 POMPONIUS (on Sabinus 5) still a woman is not at liberty to admit an inmate where he is not one who can live with propriety in the same house as the woman herself who has the usus."

8 ULPIANUS (on Sabinus 17) "But those who are entitled to usus cannot let the house for exclusive occupation, nor allow persons to live in it without them, nor can they sell the usus. 1. Should however the usus of a house be bequeathed to a woman on condition that she should be divorced from her husband, she must be excused the condition, and she can have her husband living with her in the house. This is approved of by Pomponius (b. 5)."

9 PAULUS (on Sabinus 3) "Moreover, where the usus of anything at all is bequeathed, the rule is, that the wife can have the usus of it in common with her husband."

12 ULPIANUS (on Sabinus 17) "He has a right to have the full use, if the usus of the country-seat and mansion are left him. No doubt we must on the whole say that the proprietor can come and take produce and, during the time required for getting the produce together, it must be allowed that he is at liberty to take up his abode there. 1. In addition to his right of living on the spot (habitatio), a legatee of the usus will also have the right of walking about, as well as of riding or driving; Sabinus and Cassius add that he may use wood for ordinary daily purposes, also the garden, and take apples, kitchen vegetables and flowers, as well as draw water, not however so as to make a profit, his right is to use only, in short, it does not go so far as using up. Nerva says the same thing, but adds that he can use straw and sticks, though not leaves or oil or corn or agricultural produce. Sabinus, Cassius, Labeo, and Proculus go further, and say that he may in fact take enough to maintain himself and his family out of what is grown on the estate, and that in cases where Nerva says he may not; Juventius goes so far as to let him share the use with guests and friends, and this is, I think, the true view, as a usuary may be treated a little more liberally, in accordance with the consideration due to a person to whom a bequest of usus has been made. But the things last mentioned he can, I should say, only use in the country-house; as to apples, kitchen vegetables, flowers and wood, it is worth considering whether he can only use them on the spot or they can be actually brought into the town to him; but we had better take the rule to be that they can be brought into the town, as this amounts to no great burden, if the estate yields a plentiful supply. 2. Where the bequest is of the usus of domestic animals, say a flock of sheep, according to Labeo, he can only use them for manuring purposes, he cannot take wool or lambs or milk, as these are rather of the nature of produce. He may, I should say, go further and take under the head of usus a small quantity of milk, as the will of deceased persons is not to be construed with such extreme strictness. 3. If what is left is the usus of a herd of cattle, the legatee will have a right to every kind of use, whether for ploughing or any other purpose for which cattle are fit. 4. Where the usus bequeathed is that of a stud of horses, we may consider whether the legatee can break them in and use them in harness for draught.

Should the man to whom the usus of the horses is left be a charioteer, I should say that he cannot use them for the races in the circus, as this might be held to amount to letting them out; at the same time, if, when the testator left them, he knew that such was the legatee's profession and way of life, he may be supposed to have contemplated the very thing. 5. If the usus of an attendant (ministerium) is left anyone, he can use the slave to attend upon himself (ad suum ministerium) and his children and his wife, and he will not be held to have made his right over to another, if he makes use of the man along with them; although, if the usus of a slave is left to a son under potestas or to a slave, then, inasmuch as such usus will belong to the father or the owner, as the case may be, it imports a right of use on their part only, and not on the part of those subject to their potestas. 6. The legatee cannot let out the services of a slave held in usus nor make them over to another; this is maintained by Labeo; how, indeed, can a man make over services to another when he has to use them himself? However, Labeo himself holds that, if a man hires a farm, a slave in whom he has an usus may work on it; what does it matter, he asks, in what way it is that he makes use of his services? Accordingly, if a usuary should contract to work up wool, he can very well carry out the work by means of slave women in which he has the usus, and again, if he contracts to make woven garments or to build a block of chambers, or a ship, he can employ for the purpose the services of a slave in whom he has the usus; and this does not clash with the known opinion of Sabinus that, where the usus of a female slave is given, she cannot be sent to a wool factory, nor her services be let out for money, but the legatee must, as a matter of law, make the woman work the wool for himself; of course, where the party does not let out the slave's services, but simply executes the work which he undertook to do, he does work it for himself. This view is upheld by Octavenus too."

13 GAIUS (on the provincial Edict 7) "However Labeo holds that the slave himself or the slave woman can be required to pay money instead of rendering service."

## IX.

## WHAT KIND OF UNDERTAKING IS GIVEN

## BY THE USUFRUCTUARY.

11 PAPINIANUS (Responsa 7) "Where the usus of a house is left, an undertaking ought still to be given to use in such manner as to satisfy a reasonable arbitrator; and it would not alter the case if the father desired that his sons, being heirs, should occupy the house along with his widow, who is legatee."

# NINTH BOOK.

## II.

## ON THE LEX AQUILIA.

2 GAIUS (on the provincial Edict 7) "It is provided by the lex Aquilia in Chap. I as follows:—'If anyone slays lawfully a slave of either sex belonging to another person, or a four-footed animal of the class of "pecudes", then, whatever was the greatest value of the same in the year then last past, let the party be ordered to pay brass to that amount to the owner;' 1. and then, further on, it is provided that, against one who denies the fact, the action shall be for double the amount. 2. It appears therefore that the statute puts a man's four-footed animals on a level with his slaves, such animals being of the class of pecudes and kept in herds, as, for instance, sheep, goats, kine, horses, mules, and asses. Whether swine are included under the term pecudes is a question sometimes asked, and Labeo holds very properly that they are. But the term does not comprise dogs: much less are wild beasts members of this class, such as bears, lions, and panthers. Elephants and camels are, so to speak, half and half, as they do the work of beast of draught and, at the same time, their nature is wild, consequently they must be held to be included in the first chapter."

3 ULPIANUS (on the Edict 18) "If a slave of either sex should be killed unlawfully, the lex Aquilia applies. It is very properly added that the killing must be unlawful, as it is not enough that the slave should be killed, but the act must be done unlawfully."

9 ULPIANUS (on the Edict 18) "Again, where a midwife gives a drug to a woman who dies in consequence, Labeo makes this distinction: if she administered the drug with her own hands, she must be held to have killed the woman; but if she gave it to the woman for her to take it herself, there must be an action allowed in factum; and this is a sound opinion, as in this case the midwife furnished the cause of death rather than killed. 1. Where a man, either by force or suasion, administers a drug to any person, either as a draught or by injection, or rubs him with some poinsonous preparation, he is liable under the lex Aquilia, just as the midwife is who gets a woman to swallow a drug. 2. Where a man starves a slave to death, according to Neratius, he is liable to an action in factum. 3. If my slave is riding on horseback, and you frighten the horse, and so cause the man to be thrown into the river, and he is drowned, then, as we read in Ofilius, it is a case for an action in factum; just as it would be if my slave were inveigled into an ambush by one man and killed by another. 4. But if persons are hurling spears by way of sport and a slave is killed, the lex Aquilia applies; (though if, when a number of persons were hurling spears on the exercise ground, the slave passed that way, the statute does not apply, because the slave had no business making his way at an improper time across the ground used for hurling spears; at the same time (even then) anyone who should deliberately aim at the slave would certainly be liable under the statute;)"

ON THE LEX AQUILIA.

27 ULPIANUS (on the Edict 18) "If a slave should carry off another slave belonging to a different owner and kill him, then, according to both Julianus and Celsus, there is a right of action for theft and one for wrongful damage too. 1. If a slave who is owned in common, say by you and me, should kill another slave belonging to me, the lex Aquilia will apply against you, if the man acted with your consent; and this, so we learn from Urseius, was the opinion of Proculus. If, he added, the slave did it without your consent, there is no noxal action, lest it should be in the power of the slave to make himself the property of one of us only; and this, I should say, is sound. 2. Again, if a slave owned in common by you and me should be killed by a slave belonging to Titius, Celsus says that if one of us two sues, either he will get a part of the damages assessed corresponding to his share in the slave, or else there will be an order that the slave be surrendered to him for noxa absolutely, as such delivery does not admit of division. 3. The person bound in respect of the slave who killed is the owner; a person whom he is serving as slave in good faith is not bound. Whether a man whose slave has run away is bound in respect of him, if he is sued on the lex Aquilia, is a question asked; Julianus says that he is bound, and this is perfectly sound, as Marcellus too is of the same opinion. 4. The second chapter of the statute has gone out of use. 5. In the third chapter the lex Aquilia continues thus:—'In respect of all other things besides slaves or cattle killed, where anyone does damage to another by wrongful burning, breaking or breaking up, whatever was the worth of the property in the last thirty days, the offender must be ordered to give that sum of money to the owner.' 6. If therefore a man should, in the case of a slave or an animal, not kill, but burn, break, or break up, there is no doubt that the action must be brought under the above words. Accordingly, if you throw a torch at my slave and scorch him, you will be liable to an action at my hands. 7. Again, if you set fire to my plantation or my country-house, I shall have an action under the statute. 8. If a man's object is to burn down my block of chambers, but the fire spreads to the neighbour's block too, he will be liable to an action under the lex Aquilia at the hands of the neighbour as well, and he will still be answerable to the tenants too for the burning of their moveable goods. 9. Where a tenant has a slave whose duty it is to look after a furnace, but the man goes to sleep at the fireside and the house is burnt down, Neratius tells us that, if an action is brought against the tenant on his lease, he is bound to make it good, if he was negligent in the selection of men to do the work; if, however, one man lit the fire in the furnace, and another was negligent in attending to it, will the man who lit the fire be liable? The fact is that the one who had to attend to the fire did nothing at all, and the one who lit the fire in the proper way did nothing wrong. What is the upshot? I should say that there is an utilis actio both against the man who went to sleep beside the furnace and the man who was negligent in looking after the fire; and no one ought to say, in the case of the man going to sleep, that he was overtaken by a natural weakness, as his duty was either to put the fire out or else to guard it in some way that would prevent it from spreading. 10. If you have an oven against a wall belonging to you and your neighbour, will you be liable for wrongful damage? Proculus says no such action can be brought, because none can be brought even against a man who has an (ordinary) hearth; accordingly, it would, I think, be fairest that an action should be allowed in factum, supposing, that is, that the wall is burnt, but if you have so far done me no damage, but you have simply got your fire in such a position that I apprehend that you will do damage, then I think that the case would be met by the undertaking against damnum infectum. 11. According to Proculus, where the slaves of a tenant have burnt down the residence, the tenant is liable, either on the contract of lease or else under the lex Aquilia, it being open to the tenant to

SEJANUS (on the Edict 16). "If a slave should carry off our other slave belonging to a different owner and kill him, then, accord ing to both Aelianus and Gaius, there is a right of action for theft and one for wrongful damage too. 1. If a slave who is owned in common by you and me, should kill another slave belonging to me, the lex Aquilia will apply against you, if the dam nated with your consent; and this, so we learn from Trebatius, was the opinion of Proculus. If, however, the slave did it without your consent, there is no real action, but it should be in the power of the slave to make himself the property of one of de only; and this, I should say, is sound. 2. Again, if a slave owned in common by you and me should be killed by a slave belonging to Titius, Gaius says that if one of us has no other remedy, either he will get a part of the damages assessed corresponding to his share in the slave, or else there will be no-other that ing to his share in the slave, or else there will be no other remedy available to him for more absolutely, as most delivery the slave be surrendered to him for noxal surrender of the slave does not admit of division. 3. The person who is sorrow as slave who kills is the owner; a person who is sorrowful as slave is in good faith is not found. Whether a man whose slave has run away to be found in respect of him, if he is mad on the lex Aquilia, it is question nobody believes save that he is found, and this is perfectly sound, as Marcellus too is of the same opinion. 4. The second chapter of the statute has gone out of use. 5. In the third chapter the lex Aquilia continues thus: "In respect of all other things besides slaves or cattle killed, where anyone does damage to another by wrongful burning, breaking or breaking up, whatever was the work above words. Accordingly, if you throw a torch at my slave and accor ding, you will be liable to an action at my bench. 7. Again, if you not fire to my plantation or my country-house, I shall have an action water the statute. 8. If a man's object is to turn loose my block of chambers, but the fire spreads to the neighbour's block too, he will be liable to an action under the lex Aquilia at the bench of the neighbour as well, and he will be answerable to the tenants too for the burning of their moveable goods. 9. Where a tenant has no sleep at the fireside and the house is burnt down, Servius tells us that, if an action is brought against the tenant to the tenants be liable to be sued by the landlord for the loss. 10. Where a tenant has fire to Labeo. The case is where the one who let the fire in the proper may did nothing actual, and the one who let the fire in did nothing, but another was negligent in attending to it, will the one who let the fire out be liable, however, one who let the fire in the furnace, is bound to make it good. If he was negligent in the selection of men to do the work it, however, one who let the fire in the furnace, and another was negligent in attending to it, will the one who let the fire out be liable, however, one who let the fire in the furnace, is bound to make it good. If he was negligent in the selection of men to do the work it, however, one who let the fire in the furnace, is bound to make it good. If he was negligent in the selection of

surrender the slaves for noxa, and if the case has been decided in one of the two actions, no further proceedings can be taken in the other. This is always provided there was no negligence in the tenant; but if he had slaves given to such offences, he is liable to an action for wrongful damage for having such slaves. A similar rule, he says, must be observed as to persons who are lodgers in a building, and there is much to be said for this view. 12. If my bees fly off to join your bees, and you fire them, according to Celsus I have a good right of action on the lex Aquilia. 13. The statute says ruperit (breaks up). This word is understood by nearly all the old lawyers to be equivalent to corruperit (destroys). 14. Accordingly Celsus gives this (answer to a) question (on the subject):—If you sow tares or wild oats in the middle of your neighbour's corn so as to spoil his crop, then not only can the landowner, or, if the land is let, the tenant, take proceedings by way of Interdict quod vi aut clam, but there is an action in factum too, and, if the tenant brings it, he is bound to give an undertaking that no further action shall be brought, the object being that the owner shall give no further trouble; as it is one kind of damage to destroy or spoil something in itself, and so give ground for an action on the lex Aquilia, but quite another case where, without affecting the thing in itself, you mix something else with it which it would cause trouble to get rid of. 15. Where a man contaminates wine, spills it, makes it turn sour, or spoils it in any other way, according to Celsus, an action can be brought on the lex Aquilia, as the term 'corrumpere' (destroy) extends to spilling wine or making it turn sour. 16. The same writer agrees that breaking and burning as included in the term destroying, but there is nothing new, he says, in a statute enumerating certain things specifically and then adding some general term which comprises the specific things; and this is a sound remark. 17. We must certainly hold that the word 'rumpere' applies where a man wounds a slave or strikes him with a rod or a thong, his fist, a weapon, or anything whatever, so as to draw blood or cause a bruise; but only so far as it is a case of wrongful damage to property; where the party does not lower the value of the slave to any extent or make him less serviceable, the lex Aquilia does not apply, and there will only be an action for injuriae (insult etc.), as the statute deals with those cases of 'breaking up' which occasion loss. Hence, even if the slave is none the worse as a matter of market value, but expense has been incurred to have him cured and made sound, it must be held that I (the owner) am so far damnified, and consequently that proceedings can be taken under the lex Aquilia. 18. Where a man tears or befouls someone's clothes, he is liable as though he had 'broken up'. 19. Again, if a man throws my millet or corn into a river, an action on the lex Aquilia will meet the case. 20. Also, where a man mixes sand or anything else with my corn, so that it is difficult to get rid of it, an action can be brought as it were for spoiling. 21. If anyone knocks coins out of my hand, there is, as Sabinus holds, an action for wrongful damage, supposing the coins are lost in such wise that they do not come into anybody's hands; for instance, by falling into a river, the sea, or a drain; but, where they come into someone's hands, the action must be for theft aided and encouraged; this was held by the old lawyers themselves. 22. If you hit a female slave with your fist or strike a mare and the result is a premature birth, you are liable, according to Brutus, under the lex Aquilia, as it were for 'breaking'. 23. He adds that if a man overloads a mule and ruptures any part of its body, the statute will apply. 24. Where a man scuttles a merchant ship carrying a cargo, Vivianus tells us there is a right of action under the lex Aquilia, as it were for breaking. 25. If a man picks unripe olives, or cuts an unripe crop of corn, or gathers grapes before the proper time, he will be liable under the lex Aquilia; if the fruit is ripe, the statute does not apply, as there is no wrong done; in fact the man makes you a present of the cost which would have to be

andronicus

incurred for the purpose of gathering the particular kind of crop; but, if he abstracts the crop which has been so gathered, he is liable for theft. Octavenus adds, as to the case of the grapes, the words—'unless the party throws the grapes on the ground so that they are scattered about.' 26. The same writer (Vivianus) says with respect to the taking of coppice, that, if the twigs are not mature, the party is liable under the lex Aquilia, but, if he takes them when they are mature, he is liable for theft, and also for trees cut by stealth. 27. If you (cut and) carry away a fully grown willow plantation, but do not injure the stocks, the lex Aquilia does not apply. 28. If a man castrates a slave boy and so raises his value, according to Vivianus, the lex Aquilia does not apply, but the action must be for injuriae (insult—to the owner), either on the Edict of the Ediles or for fourfold. 29. If you send anyone a cup to be pierced with holes, then, if he breaks it through want of skill, he will be liable for wrongful damage; but if he breaks it through no want of skill, but the fact is that it had cracks which spoilt it for the above treatment, he may well get off. In consequence of this, it is a practice of workmen, when articles of this kind are put in their hands, to make an agreement that they shall not do the work at their own risk, and this bars any right of action either on the contract or under the lex Aquilia. 30. A husband gives his wife a number of unstrung pearls to use; should the wife thereupon, without the husband's consent or without his knowledge, perforate the pearls in order to wear them, when so bored, on a thread, she is liable under the statute, whether she is divorced or is still the man's wife. 31. If a man breaks down or breaks open the doors of a building belonging to me, or demolishes the building itself, he is liable under the lex Aquilia. 32. If a man demolishes a watercourse belonging to me, then, although the materials which are thrown down are my property, still, as the ground across which I conduct the water is not mine, the best conclusion to come to is that an utilis actio must be allowed. 33. If a stone falls off a waggon and breaks to pieces or fractures anything, it is held that the waggoner is liable on the statute, if the reason the stone gave way was that he packed them badly. 34. A man hires a slave to lead a mule and puts the animal under his charge; the slave thereupon ties the line by which he is holding the mule to his thumb, and the mule breaks away, tears the slave's thumb off, and then throws itself over a height: here Mela holds that if an unskilled slave was let out on the understanding that he was a skilled one, an action on the contract can be brought against the owner of the slave on account of the mule being destroyed or disabled, but if the mule was excited by being struck or frightened, then the owner, I mean the owner of the mule, and the owner of the slave will have a right of action under the lex Aquilia against the man who excited the mule. My own opinion is that, even in the case in which there is a right of action on the contract, there is a good right of action on the lex Aquilia too. 35. Again, if you put a vat full of wine in the hands of a plasterer, under an agreement that he shall do what is wanting with it, and he knocks a hole in it, so that the wine runs out, Labeo says that the proper action is in factum."

56 THE SAME(Sentences 2) "If a wife does damage to her husband's property, she can be sued in accordance with the terms of the lex Aquilia."

TENTH BOOK.

II.

ON DIVIDING AN INHERITANCE (familiae erciscundae).

20 ULPIANUS (on the Edict 19) "Where a married daughter (being one of the heirs of her father), was bound to bring her dos into hotchpot (dotem conferre), and, through a mistake on the part of her co-heirs, she gave an undertaking to the effect that she would pay them in proportion to their respective shares in the inheritance whatever she recovered from her husband, Papinianus has it that, in spite of this, the arbiter in the action familiae erciscundae must rule that, even if the wife herself should depart this life without the married state having ended, the dos must still be brought in; no inadvertency, he says, on the part of the co-heirs can make any difference as to the course which the legal proceedings will have to take. 1. If a son under potestas has incurred an obligation at his father's request, he must retain the amount out of the assets; indeed, if he spent money in his father's interest, the same rule applies; and, if (the right of action was) de peculio, the son will retain his peculium (to the extent of the amount of the debt). All this was laid down by rescript by the present Emperor. 2. Besides this, where a son under potestas is appointed heir, he can retain his wife's dos; and this is reasonable, as it is he who has to bear the expense entailed by the married state. Accordingly, he can retain the whole dos, and he must give an undertaking to his co-heirs, who are liable to an action on stipulation, that the action shall be defended on their behalf. A similar rule holds where a stranger gave the dos and made a stipulation. (The rule applies to) not only the dos of the son's own wife, but to that of his son's wife, on the ground that this too is an expense entailed by the married state which falls on him, as he is obliged to answer for the expense which will be incurred by his son and his daughter-in-law. According to Marcellus, the son will retain the dos not only where it was given to his father, but where it was given to himself, such son; so far that is, where it was given to himself, as his peculium covers it, or as it was spent in his father's interest. 3. Where a father divides his property among his sons without any writing and apportions the burden of his debts among them according to what they respectively get, this, Papinianus says, is not to be treated as a mere gift, but rather as a distribution in virtue of a man's last will. Of course, he says, if the creditors bring actions against them for amounts corresponding to their respective shares in the inheritance, and one of them declines to be bound by terms of the arrangement, an action can be brought against him praescriptis verbis, on the ground that they made an exchange on definite terms, provided, that is, all the property was included in the division. 4. The action familiae erciscundae cannot be brought more than once, save on special cause shown; and, if there are some things left undistributed, in respect of these there can be an action communi dividundo. 5. Papinianus says that if the duty of paying a debt is paid on one of the heirs without its being done by way of a legacy (to the creditor), then, in virtue of the office of the judge who hears the case on familiae erciscundae, the heir is compelled to undertake the payment—though not to the extent of more than three-quarters of his share, in order that he may have one clear quarter; accordingly, he will have to undertake to save his co-heirs harmless. 6. The same writer says further that

where a son is liable on a balance of accounts in respect of public offices which his father consented to his exercising, and is then appointed heir to the extent of a share, he will have a right to retain the amount of his liability, because this was one of the debts owed by his father; but, as for any offices which he undertook after his father's death, the father's heirs are not liable in respect of them. 7. There is, however, an opinion given by Neratius to this effect. A man, he says, who had several sons, offered that one of them should undertake an agonothesia (superintendence of public games), and, before the son had discharged the office, the father died, having appointed heirs all his sons; whereupon the question was asked whether the son first mentioned could, by an action familiae erciscundae, recover the amount he had expended in the matter; to which, he said, his reply was that there was no action by which he could recover it. This is, very properly, not admitted; so that the expense in question must be held to be within the scope of the action familiae erciscundae. 8. Again, Papinianus says that, if a husband directs one of his two heirs to bear the burden of paying the dos, where the same is due in pursuance of a stipulation, but the widow brings her action for dos against both, the heir who was directed to undertake the burden must defend his co-heir in an action so brought. But, if legacies are left at the charge of both heirs to take the place of the dos and, in consequence of the widow electing to be paid the dos as such, they are retained by the heirs, such retention ought not to profit the co-heir who is relieved of the payment of the debt; (that is, the dos;) the intention being that the co-heir who undertook the burden of the debt, should, by the exercise of the judge's office, get the legacy (charged on the other). All this is perfectly correct, unless the testator directed otherwise. 9. The same writer says that where a statuliber pays money to one of several co-heirs out of his peculium, by way of fulfilling the condition on which he is to become free, the money is not included in this action, and it need not be shared."

MODESTINUS (Responsa 6) "I have a piece of land in common with a girl sui juris who is under age and co-heir with me; in the same land human remains are buried to which veneration is due on the part of both, in fact, the girl's own parents are buried there. Her guardians, however, wish to sell the land, to which I do not consent, preferring, as I do, to keep in my hands my own portion, as I cannot afford to buy the whole piece of land, and I should like to discharge the duty which we own to the dead (jus religionis) at my own pleasure. I wish to know whether my proper course is to ask for an arbiter by an action communi dividundo to partition the piece of land in question, or the same arbiter as is appointed for the purposes of the action familiae erciscundae can discharge the office as well, and so divide this property too between us in accordance with our respective rights apart from the rest of the assets. Herennius Modestinus replied that there was nothing in the facts stated to prevent the person who was appointed arbiter in the action familiae erciscundae from extending the exercise of his function to the business of dividing the piece of land in question; at the same time 'religious' spots could not be brought within the scope of the action, and rights over them appertained to each separate heir in respect of the whole."

THE SAME (Responsa 12) "Pomponius Philadelphus delivered certain plots of ground by way of dos to a daughter whom he had under his potestas, and requested that the rents and profits of the same should be handed over to his son-in-law (her husband); the question was asked whether the daughter could retain the land for herself on the father appointing all his children (filios) heirs. My answer was that the daughter had good ground to retain the possession; as the father desired the lands in question to go for dos, and the married state had continued even after the father's death; the fact being,

I said, that the case being defended was that of a daughter who remained in de facto possession, as though in virtue of a dos which she was capable of taking."

38 PAULUS (Responsa 3) "Lucius and Titia, brother and sister, being emancipated by their father, had, when adult, curators appointed them, and these supplied both of them separately with money which was their common property, being derived from rents and profits. They afterwards divided the whole property between them, and, this being done, Titia, the sister, began proceedings against her brother Lucius on the alleged ground that he had received more than she had. Now as Lucius the brother did not get more than his proper portion, indeed got less than half the whole estate, I wish to ask whether Titia has a good right of action against her brother. Paulus replied:--"Upon the facts stated, if Lucius did not receive from the rents and profits of the lands owned in common more than what he had a right to in virtue of his share in the inheritance, I should say that his sister has no right of action against him.' He gave a similar answer in a case where it was maintained that an alimentary provision having been ordered by the Praetor, a brother and received more than his sister, but not more than half the whole."

39 SCAEVOLA (Responsa 1) "A man who was appointed heir in respect of a share defended an action relative to the whole estate, the action being against all the heirs and founded on the alleged fact of their not having avenged (the testator's) death,--and he got judgment; hereupon a co-heir brought an action to recover his share from the heir above mentioned, but declined to pay his portion of the expense incurred in defending the (previous) action. The question was asked whether the co-heir's action would be barred by an exceptio of dolus. My answer was that if additional expense had been incurred (by the present defendant) in consequence of a defence which he had made in the interest of (the present plaintiff) himself (as well as his own), such expense ought to be taken into account; and even if the present defendant did not raise the exceptio of dolus, he could bring an action to be reimbursed a portion of the expenditure incurred. 1. A man who died intestate made codicils in which he divided all his landed estates and other property between his (two) children in such a way as to leave a great deal more to his son than to his daughter; the question was asked whether the sister was bound to bring her dos into hotchpot for the benefit of her brother. My answer was that, upon the facts as stated, if the deceased left no property undivided, the more correct view was that the right to ask to have the dos brought into hotchpot was taken away by the deceased's own wish. 2. A testator gave a slave of the age of fifteen years his freedom when he should reach the age of thirty, and also signified his wish that there should be given him from the day of his own death for the rest of the slave's life ten denarii (a month?) for his food and twenty-five denarii (a year?) for his clothing. Stichus (the slave in question) having died before the day when he was to be free, the question was asked whether the legacy providing food and clothing was valid, and also whether, in case it were not valid, the heir who had paid it could recover it from his co-heir in whose house the slave had been living. My answer was that the money had not been due and payable, but still, if what was given had been spent on an aliment, that it could not be recovered. 3. A man cannot charge his brother in proportion to the share of the latter in the inheritance of their father with debts owing to the municipality which he himself contracted after the father's death, unless the two brothers were partners in respect of their whole property; even though they possessed their father's estate in common and the father before his death had discharged a magistracy in his municipality on behalf of his other son. 4. A man named his two sons heirs, and bequeathed to each of them by way

of praelegatum certain specified slaves, including, in the case of one of the sons, a slave named Stephanus, with his peculium. This slave was manumitted and died in the lifetime of the testator, then the father died; and the question was asked whether what Stephanus had in his peculium before he was manumitted belonged to both sons, or only to the one to whom Stephanus was bequeathed by way of praelegatum with his peculium. My answer was that, on the facts as stated, it belonged to both. 5. A father divided his property amongst his sons, and confirmed the division by testament, providing further that whatever debt any one of his sons had incurred or should incur he should remain liable for the whole of it; after this, on one of the sons borrowing money, the father came forward, and, with his consent, the land which he had assigned to the son was pledged (as a security for the money). After the death of the father, the same son was in possession of the land and paid interest on the debt; I wish to know, supposing the creditor sells the land given in pledge, whether anything will have to be paid to this son by a co-heir which could be realised by an action familiae erciscundae. My answer was that, taking the facts as stated, nothing need be paid."

41 PAULUS (Decrees 1) "A woman appealed from the decision of a judge on the ground, as she alleged, that, in an action familiae erciscundae between her and a co-heir, he had divided not only the property but the freedmen too, and also the (liability to pay an) alimentary provision which the testator had ordered to be given to particular freedmen; this, she said, he had no right to do. It was replied on the other hand that both parties had agreed to the division and had paid the alimentary provision for a great number of years in accordance with the terms agreed upon. The decision was that they must abide by the alimentary provision; but the judge added that the division of freedmen was of no force."

46 PAULUS (on Sabinus 7) "If the husband is appointed heir by his father subject to a condition, (the rule is) that in the meantime the wife's right of action for dos is suspended. No doubt, if a divorce takes place after her father-in-law's death, though at a time when the condition on which her husband was to be heir is still pending, the rule is that he has a right of retainer as to the dos, because, on the death of the father, some things go with his sons even before they become his heirs, such as (duties connected with the expense entailed by) marriage or (with) children or guardianship. Accordingly, a son who, after the death of his father, bore the expense entailed by marriage has a right to retain the dos; and this was the opinion of our friend Scaevola himself."

## IV.

## ACTION FOR PRODUCTION.

14 POMPONIUS (on Sabinus 14) "Where a husband has received a gift of money from his wife, and, knowing that the property in the money did not pass, he gives it away in payment for something that he has bought, he maliciously contrives not to possess it, and is consequently liable to an action ad exhibendum."

## ELEVENTH BOOK.

### III

### ON CORRUPTING A SLAVE.

1 ULPIANUS (on the Edit 23) "The Praetor says:—'Where a man is alleged to have harboured a slave of either sex belonging to another or induced him or her maliciously to act in any way with intent to deteriorate his or her character, I will allow an action against him for twice what the matter comes to'. 1. A man who is a bona fide purchaser of the slave will not be liable under this Edict, nor can he himself bring an action for corrupting the slave, as he has no interest in the slave not being corrupted; in fact, it is clear that, if his right to sue were admitted, two persons would have a good right of action for corruption of the slave, which is absurd. It may be added that, according to the received opinion, the action cannot be brought by one who has bona fide the services of a freeman. 2. With regard to the word 'harboured' (recepisse), as used by the Praetor, what this is taken to refer to is the case of a man taking in another man's slave at his own place of abode; 'harbouring' is, strictly speaking, affording a slave a refuge with a view to concealing him, whether it be on the party's own ground or in a place or building belonging to another. 3. To induce (persuadere) is to compel and constrain a person to obey you; but 'induce' is a kind of neutral term, as the incitement may be applied by giving good advice as well as bad; accordingly the Praetor adds the words 'maliciously' and 'with intent to deteriorate the slave's character'. So that one who solicits a slave to do or to plan something objectionable must be the kind of person who is held up to observation in this Edict. 4. Is a man, however, liable only where he has driven a well-conducted slave to commit an offence, or is he equally so where he instigates a bad slave, or shows a bad slave the way to commit it? The truer view is that even where he shows a bad slave how to commit an offence he is liable. Indeed, if the slave had made up his mind independently to run away or to commit a theft, and the party in question is shown to have applauded his design, he is liable; the slave's bad disposition ought not to be made worse still by approbation. Accordingly, whether a man makes a good slave bad or makes a bad slave worse, he will be held to corrupt him. 5. A person too, makes a slave worse who induces him to commit wrongful damage or theft or to run away or to instigate a slave belonging to some other person to commit such offences, or to make his peculium undistinguishable, or to go after girls, or to loiter about, or to give himself up to magical arts, or to spend too much time at public shows, or to engage in riots, or again who induces (a slave who is) a bailiff, either by words or bribes, to multilate (or) falsify his master's accounts or even to confuse an account put in his hands,

2 PAULUS (on the Edict 19) or who encourages a slave to live expensively, or to be insubordinate, or induces him to submit to stuprum."

5 ULPIANUS (on the Edict 23) "The word 'maliciously' must be applied equally in the case of one who harbours a slave, so that a man is not liable unless he harbours maliciously; if he harboured the slave with a view to keeping him safely on his owner's behoof or from motives of humanity or out of pity or on some other approved and lawful ground, he is not liable. 1. If anyone maliciously induces a slave whom he took for a freeman to do anything, I should say that

## III

### ON CORRUPTING A SLAVE.

he ought to be held liable, as one who corrupts a slave whom he believes to be free commits a still greater offence (than if he know him to be a slave), consequently, if the man really is a slave, the party will be liable. 2. The action is for twofold damages, even where the defendant admits his guilt, though the Aquilian action only inflicts that penalty on one who denies. 3. Where the offender is a slave of either sex, the action is allowed with the option of surrender for noxa. 4. The action relates to the date at which the slave was corrupted or harboured, and not the date of the application, so that if the slave should be dead or have been disposed of or manumitted, the action may none the less be brought, and, the right to bring it having once accrued, it is not lost by manumission,

14 PAULUS (on the Edict 9) so that the petition for recovery of an inheritance may have as wide a scope as this action. 1. There is no provision under this Edict for the case of a son or a daughter under potestas being corrupted, as the action established is one for corrupting a slave who is part of a man's property, and for a case in which the proprietor can show that his means are reduced, though the honour and good name of his family are unaffected; but there is a good right to an utilis actio for an amount which the judge can be called upon to determine, as everybody has an interest in the character of his children not being corrupted. 2. If a slave which you and I have in common corrupts a slave who belongs to me in severalty, Sabinus holds that there is no right of action against a co-owner, any more than if my own slave had corrupted a fellow-slave. Again, if a slave owned by two in common corrupts the slave of a third person, it is a fair question whether there has to be one action against both co-owners, or each may equally well be sued separately, as in the case of other offences committed by slaves; but the better opinion is that each owner is liable for the whole, but, if one pays, the other is discharged. 3. If a slave in whom I have a usufruct corrupts a slave who belongs to me, I have a right to sue the bare proprietor. 4. A person who has pledged a slave for debt can bring this action in respect of him. 5. In this action the twofold damages are not something over and above the recovery of property (i.e. of the slave); what is doubled is the amount of loss incurred. 6. This being the case, the rule follows thereupon that if you induce my slave to commit a theft on Titius, you not only are liable for the amount to which the slave's character is deteriorated, but also for whatever I shall have to give Titius. 7. Moreover you are liable to be sued by me not only if the slave does me a mischief at your instigation, but even if he does it to a stranger, on the ground, that is, that I have to answer for it under the lex Aquilia; or, again, if I am liable to an action on a contract of hiring at the hands of someone because I let out a slave to him the slave was deteriorated by your act, you will be liable on this ground, and so with any similar cases. 8. The measure of damages in this action is the extent to which the slave's value is reduced, and that the judge may be called upon to determine. 9. Sometimes indeed the slave becomes of no value at all, so that it is not worth while having such a slave. In such a case, then, does it follow that the instigator is compellable to pay the whole value the slave bore and the owner has the slave over and above; or ought the owner to be compelled to hand over the slave and accept what he is worth? The true rule is that the owner must be allowed to elect whether he would like best to retain the slave and to accept damages equivalent to double the extent to which the slave is deteriorated, or to hand over the slave, if he is in a position to do so, and take his value, and, if he is not in a position to do so, still to take his value, and to assign to the instigator his rights of action for recovery of the slave, so that the latter can sue at his own risk. Of course what is said as to handing over the slave only applies where the slave is alive when the proceedings are

14 TAKING (on the Mind) or that the petition for recovery of
an interference may have as side a scope as this action. It does in
no provision under this Mind for the case of a son or a daughter
under potential being corrupted, as the action actually is one for
corrupting a slave who is part of a man's property, and for a case in
which the proprietor can show that his means are reduced, though the
behavior and good name of his family are unaffected; but there is a good
right to an action for an account which the judge can be called
upon to determine, as everybody has an interest in the character of
his children not being corrupted. 5. If a slave which you and I have
in common corrupts a slave who belongs to me in severalty, Sabinus
holds that there is no right of action against co-owner, any more
than if my own slave had corrupted a fellow-slave. Again, if a slave
owned by two is caught corrupting the slave of a third person, it is a
or each one equally well be sued severally, as in the case of other
offences committed by slaves; but the better opinion is that each
owner is liable for the whole. But, if one pays, the action is dis-
charged. 6. If a slave is vice I have a usufruct corrupts a slave
the belongs to me, I have a right to sue the bare proprietor. 7. A
person who has pledged a slave for debt can bring his action for re-
gport of him. 8. In this action the twofold damage are not exa-
tiling over and above the recovery of property (i.e. of the slave);
what is decided in the amount of loss incurred. 9. This being the
case, the rule follows thereupon that if you induce my slave to
commit a theft or flight, you not only are liable for the amount to
which the slave's character is interfered, but also for whatever
I shall have to give Titius. 10. Moreover you are liable to me and
if he not only if the slave has me a slighted at your instigation,
but even if he does it to a stranger, to the former, that is,
I have to answer for it under the Lex Aquilia or, again, if I am
liable to an action or a contract of strike at the hands of someone
[illegible] let out a slave to him the slave was deteriorated by your
act, you will be liable on this ground, and no other action cease.
8. The measure of damages in this action is the extent to which the
slave's value is reduced, and that the judge may be called upon to
determine. 9. Sometimes indeed the slave becomes of no value at
all, so that it is not worth while having such a slave. In such a
case, then, does it follow that the instigator is compelled to pay
the whole value the slave bore and the owner has the slave over and
above or ought the owner to be compelled to hand over the slave and
accept what he is worth? The true rule is that the owner must be
allowed to elect whether he would like best to retain the slave and
to accept damages equivalent to decide the extent to which the slave
is intoxicated, or to hand over the slave. If he is a restless
to do so, and take his value, and by if he is not-de a position to do
so, still to take his value, and to retain to the instigator his
rights of action for recovery of the slave, so that the latter may
be at his own risk. It seems just to hold as to heading over the
slave only applies where the slave is alive when the proceedings are

brought. Suppose however the slave was manumitted before the proceedings were brought. It will not lie in the defendant's mouth to say in open court that the reason why he manumitted the slave was that he did not wish to have him in his house, his object being to get the money and to have a freedman too."

17 MARCELLUS (Rules 4) "A husband is allowed an action against his wife on the ground of corrupting a slave, even while the marriage state still lasts, but only for the simple value, in consideration of matrimony."

## VII.

## ON THINGS RELIGIOUS AND FUNERAL EXPENSES AND

## ON THE RIGHT TO CONDUCT FUNERALS.

5 GAIUS (on the Provincial Edict 19) "'Household burial place' is the expression used of a burial place which a man appoints for himself and his household; a burial place is called 'hereditary' where he appoints it for himself and his heirs,

6 ULPIANUS (on the Edict 25) or where the testator (paterfamilias) had acquired it by right of hereditary succession. But in both alike heirs and other successors of whatever kind may lawfully be buried and may lawfully bury, even though they should be heirs, whether by testament or upon intestacy, to a very small extent, and their co-heirs should not consent. The same right is allowed to children and remote descendants of either sex and of whatever degree, even when emancipated, whether they have become heirs or they decline the inheritance. As for disinherited persons, they may be buried themselves, simply as a matter of humanity, unless the testator has expressly forbidden it, moved thereto by some reasonable antipathy, but they are not at liberty to bury others, except their own issue. Freedmen cannot be buried, nor can they themselves bury (in ground that was their patron's), unless they are heirs to their patron; though there have been patrons who have recorded by inscription that they had set up monuments for themselves and their freedmen. This has been declared by Papinianus, and the law has been often laid down to the same effect. 1. So long as there is a mere (purum) monument, it may be sold or given away; if it becomes a conotaphium (a monument in memory of one who is not to be buried on the spot), the proper rule is that it may be sold; as the Divine Brothers laid down by rescript that such a monument is not religious."

16 ULPIANUS (on the Edict 25) "Where anything comes to a man under the head of dos, the Praetor allows an actio funeraria against him; as it was held by those of old time to be most agreeable to justice that the funeral expenses of women should be defrayed out of their dowers, as though such were their own property, and that the man who on the death of the woman is the richer by the dos, whether father or husband of the deceased, ought to contribute to the funeral expenses."

20 THE SAME (on the Edict 25) "Neratius asks this question:—Where a man who gave a dos for a woman stipulated that two-thirds of it should

VII.

OF CHURCH RELIGIOUS AND FUNERAL RESTRICTS ALT

ON THE RIGHT TO COMMON BURIAL.

6. BALAN (on the Prevalent Edict 13) "Ghoumerold burial place' [illegible] of a burial place with a new epithet for [illegible] and for [illegible] burial place is called 'hereditary' where he exploits it for himself and his kin".

7. UPLIANS (on the Edict 25) "or where the testator (paterfamilias) had acquired it by right of hereditary succession". But in both alike heirs and other successors of whatever kind may lawfully be buried and may lawfully bury, even though they should be heirs, whether by testament or upon intestacy, to a very small extent, and their co-heirs should not consent. The same right is allowed to children and remote descendants of either sex and of whatever degree, even when emancipated, whether they have become heirs or they failed themselves, heirs. As for disinherited persons, they may be buried themselves, [illegible] as a matter of humanity", where the testator has expressly forbidden it, saved thereby by some reasonable misjudgment, but they are not at liberty to bury others, except their own issue. Freedmen non-patrons[a], unless they are heirs to their patrons although there have not be buried, nor can they themselves bury [illegible] those born from [illegible] and their freedmen. This has been decided for themselves and their freedmen. This has been decided by Papinianus, and the law has been often laid down to the same effect.

8. BALAN (on the Edict 26) "Where anything comes to a man by fideicommissum, and the heir refuses an estate [illegible] under the bond of do, the Praetor allows an estate [illegible] first on it was held by those of old time to be most [illegible] to justice that the funeral expenses of testor should be [illegible] out of their dowries, as indeed such were their property, and that the rest also on the goods of the deceased, ought to contribute to the funeral [illegible] or burdened of the deceased, ought to contribute to the funeral expenses."

9. [illegible] (on the Edict 26) "Hermias asks this question--Where a man who gave a tax for a mean stipulated that two-thirds of it should

be returned to him, and the other third should remain with the husband, and afterwards agreed that the husband should not have to contribute anything to the funeral expenses, will the husband be liable to the actio funeraria? To this he says that, if the stipulator himself conducted the woman's funeral, the agreement will take effect and he will get nothing by the actio funeraria; but, if someone else conducted it, that person can sue the husband, as the agreement in question must not bar the law of the land. Suppose however a person gives dos for a woman on the understanding that it is to revert to him if the woman should die while still under coverture, or the married life should come to an end in any other way,—would he not in this case have to contribute to the funeral expenses? As to this, seeing that the dos returns to him by the woman's death, it may be said that he must contribute. 1. If the husband is the richer by the amount of the dos, he will be liable to the actio funeraria, and not the father. Still, in regard to this case, I should say that, if the dos is a very small one and so will not bear the cost of the funeral, an action ought to be allowed against the father for the unpaid balance. 2. If a woman who is not under potestas dies and her estate is insolvent, her funeral expenses are chargeable on the dos alone. We find this in Celsus."

22 ULPIANUS (on the Edict 25) "We read in Celsus:—On the death of a married woman, the funeral expenses should always be a charge on the dos remaining in the hands of the husband and on the general property of the deceased, in proportion to their respective values."

27 ULPIANUS (on the Edict 25) "In this way the husband and the heir have to contribute to the funeral in proportion (to the amounts they receive). 1. There can be no actio funeraria against the husband, if he handed over the dos to his wife during the coverture, so Marcellus tells us, and this is a sound opinion,—that is to say, in those cases in which the statutes allow the husband to act in the way described. 2. I may add that in my opinion a husband can be compelled to pay by means of the actio funeraria only to the extent of his means; the fact is that he is the richer by the amount which he would have had to hand over to his wife if she had sued him."

28 POMPONIUS (on Sabinus 15) "Should there be no dos, then, according to Atilicinus, the whole expense ought to be paid by the father; or else by the heirs of the woman, supposing, that is, she should be emancipated. Should the woman have left no heirs, and the father be insolvent, the husband, he says, can be sued to the extent of his means, with the object to preventing its being set down to his misconduct that his late wife was left unburied."

29 GAIUS (on the Provincial Edict 19) "If a woman who is divorced marries another man and then dies, Fulcinius holds that the first husband is not chargeable with funeral expenses, although he is the richer by the amount of the dos. 1. A man who holds the funeral of a married woman who was under potestas has a good right to sue the husband, so long as the dos is not restored to the woman's father; if it has been restored, his claim will be against the father; but, in any case, where the husband has been sued, he need hand over the loss to the woman's father by the amount (which he has paid the plaintiff in the action)."

30 POMPONIUS (on Sabinus 15) "Conversely, whatever the father disbursed for the funeral of his (married) daughter or hands over in consequence of an actio funeraria brought against him by another, he can recover from her husband in an action de dote. 1. But if a married woman who has been emancipated dies during coverture, her heirs or bonorum possessores will have to contribute, and so will the

father in proportion to the amount of the dos which he has received, and the husband in proportion to the amount of it by which he is the richer."

31 ULPIANUS (on the Edict 25) "Where a son under potestas is a soldier and possesses castrense peculium, I should say that the successors to his estate are liable in the first instance, and, after that, recourse must be had to the paterfamilias. 1. A man who buries a slave of either sex belonging to another can bring an actio funeraria against the owner. 2. This action is not barred by the lapse of a year, but is perpetual; it is allowed to the heirs and to successors in general, also against successors (of the deceased owner)."

32 PAULUS (on the Edict 27) "If one who is in possession of an inheritance holds the funeral, but, after that, being adjudged to be disentitled, omits, in handing over the estate, to deduct the amount of the expense which he incurred, he will have an utilis actio funeraria. 1. If husband and wife should both die at the same moment of time, then, according to Labeo, this action ought to be allowed against the heir of the husband in proportion to the amount of the dos that comes to him, the fact being that this liability passed to him as bound up with the dos."

46 SCAEVOLA (Questions 2) "If a man had a number of pieces of land and left the usufruct in everyone of them separately by way of legacy, his body may be buried in one of them, the heir being at liberty to select the one and thus able to favour the other owners; however, the usufructuary fixed upon must be allowed an utilis actio against the heir to enable him to recover an amount representing the extent to which the usufruct is depreciated by the selection made. 1. If the heir of a woman buries the body of the deceased in land which is part of her estate, he can recover from her husband, where the latter is bound to contribute towards the cost of the funeral, an amount depending on the value of the ground used. 2. Where wearing apparel is left to a man, but he disposes of it with a view to the (testator's) funeral expenses, the present law is that he should be allowed an utilis actio against the heir, and that with the preferential claim."

## VIII.

## ON CARRYING IN A DEAD BODY AND BUILDING A SEPULCHRAL MONUMENT.

2 MARCELLUS (Digest 28) "One of the 'Royal Statutes' lays down that, on the death of a woman with child, she will not be buried until the unborn infant is extracted; anyone who transgresses this rule may be said to have taken away the prospect of the living child in disposing of the body of the pregnant woman."

father in proportion to the amount of the dos which he has received, and the husband in proportion to the amount of it by which he is the richer."

TWELFTH BOOK.

II.

ON SWEARING AN OATH, WHETHER VOLUNTARY,

COMPULSORY OR JUDICIAL.

3 ULPIANUS (on the Edict 22) "The Praetor's words are:—'Where the party against whom proceedings are had takes an oath, on such terms being offered' etc. By the party against whom proceedings are had we must understand the defendant himself. The additional words—'such terms being offered'—are not superfluous, as if the defendant should take the oath without anyone tendering it to him, the Praetor will pay no heed to the oath so taken, the party swears to himself; were it otherwise, anybody who has no scruples about swearing would betake himself to the expedient of swearing an oath, though no one tendered it, and so rid himself of the burden of meeting an action at law. 1. Whatever kind of action it is in which a man sued, if he takes the oath, he will get the benefit of it, whether the proceedings are in personam or in rem or in factum or taken by way of a penal or any other kind of action or for an interdict. 2. Add that, if the subject of the oath is the status of anyone, the Praetor will uphold the oath: suppose, for instance, I tender the oath and you swear that you are not subject to my potestas,—your oath must be regarded. 3. Accordingly, Marcellus has it that an oath may even be sworn on such a point as whether such and such a woman is with child or not, and the parties must abide by the oath; lastly he says that, where the inquiry is as to possession, the oath must be decisive; where, for instance, a woman claims to take possession of property on the ground of pregnancy, and, the other party repudiating her claim, either she swears that she is pregnant, or the other side swears the contrary; in which case, if she herself swears, she can take possession without misgiving, and if the oath is in contradiction of her claim, she cannot do so, even though, as a matter of fact, she should be pregnant; and, so Marcellus tells us, the woman who takes the oath will get the full benefit of it, so as not to be subjected to proceedings on the ground that she had taken possession as on behalf of an unborn child on a false pretence, nor to be exposed to disturbance when in possession. As to whether the oath avails to such an extent as to preclude inquiry, after a child is born, into the question whether the person whose child it is said to be is the father or not, this is a point discussed by Marcellus; who holds that there ought to be an inquiry into the actual fact, because the oath does not benefit nor prejudice any third person; accordingly the oath of the mother will not benefit the child, nor will any prejudice be occasioned if the mother tenders the oath and it is thereupon asserted on oath that she is not pregnant by such and such a man. 4. The oath must be taken as tendered; there is no doubt that if I tender an oath for you to swear by God, and you swear by your own head."

16 ULPIANUS (on the Edict 10) "If a patron marries his freedwoman, he cannot be compelled to swear in an action for 'things removed' (theft from a wife). Furthermore, if he himself tenders the oath to his freedwoman, he will not be obliged to swear that his proceedings are not vexatious."

## (3) SPEAKING AS CATO, RENDER VOLUNTARY.

### CONSEQUENCE VS JUDICIAL.

26 PAULUS (on the Edict 18) "Whenever anyone is averred to have sworn, it is immaterial what the persons sex or age may be; the oath ought to be upheld absolutely, as against a party who was willing to take the risk of it when he tendered it; at the same time a ward is never deemed guilty of perjury, as it is not held that he deceives knowingly. 1. If a father swears that his son is not bound to pay, Cassius gave the opinion that father and son both should be allowed to plead the oath by way of exceptio; if the father swears that there is nothing in the peculium, there can be an action brought against the son, but the father can be sued too, on the principle, that is, of taking into account peculium subsequently acquired. 2. Putting a man on the terms of taking an oath is perhaps a transaction of the same class as novating or transferring a contract, as it is founded on an agreement, though it is tantamount to a judgment too."

28 PAULUS (on the Edict 18) "In the case of two correal creditors by stipulation, if one tenders the oath, it can be pleaded to an action by the other also. 1. Where a principal debtor swears, the surety gets the benefit of it too; and where an oath has been obtained from a surety, according to Cassius and Julianus, this benefits the principal debtor as well; the oath operates in the same way as payment, and hence it must be treated as doing so in this case too, always provided that recourse was had to the oath in order to deal with the contract itself and the matter at stake, and not merely with the position of the party swearing. 2. If a man has promised to produce my debtor before the Court, and I tender him the oath, whereupon he swears that he never promised to produce the person in question at all, this will be no defence to my debtor; but if what he swears is that he is not himself under any liability to me, in that case a distinction must be made, and the pleadings can be mended by a replicatio, (the question being) whether he swore as mentioned on the ground that after his promise he had actually produced the person in question or because he had paid the debt; and a similar distinction can be made with reference to a surety for a debt. 3. Of two correal debtors of a sum of money one took the oath; this can be pleaded by the other as well. 4. An oath can be pleaded by way of exceptio not only where the plaintiff if suing in the action with reference to which he got the oath taken, but even in a different action, provided only the same matter of fact is material for the purposes of the later suit; as, for instance, where an oath has been called for in connexion with an action on a mandate or a case of voluntary agency or a partnership or with any other similar action, and then a specific condictio is brought founded on the same facts; the truth is, the one action disposes of the other. 5. If a man swears that he did not commit a robbery, he cannot derive any benefit from this oath in an action for theft or a condictio (furtiva), as theft is a distinct offence, being one which can in fact be committed secretly. 6. If an action is brought against a tenant on his contract (ex locato), on the ground, it may be, of his having cut down trees, and he swears that he did not cut any, then, if he is sued afterwards on the Law of the Twelve Tables under the head of trees cut down, or on the Lex Aquilia for wrongful damage, or by application for an interdict quod vi et clam, he can make a good defence by pleading his oath. 7. If a woman swears that she did not remove her husband's goods in contemplation of a divorce, this does not enable her to defend herself by the exceptio in case she is sued in an action to recover the goods, so that if she maintains that they are her own property, another oath is required; on the other hand, if what she swore (at the outset) was that the goods were her own, this affords a defence to an action for removal. In short, the general rule is that, even where it is a different action in which the same inquiry takes place, an exceptio founded on the oath will be to the purpose. 8. Accordingly, where a man swears that judgment was never given against him, even though

PAULUS (on the Edict 18) "Whatever agrees to agree to
sworn, it is immaterial what the persons may or may not for the most
ought to be unduly Mortgaged, as against a party who was willing to
take the risk of it when he received it at the same time a need by
never deemed public-duty, as it is not held that to dissolve
annulled. 1. If a factor avers that his son is not bound to pay,
Caelian says the opinion that father and son both should be allowed
to plead the oath by way of Exception: if the factor proves that he
is nothing in the peculium, there can be no action brought against
the son, but the factor can be sued too, on the principle that is
of taking into account peculium subsequently acquired. 2. Putting
a run on the terms of taking an oath is perhaps a renunciation of the
same class as novating or transferring a contract, as it is founded
on an agreement, though it is contrary to a judgment too."

PAULUS (on the Edict 18) . "In the case of the correal creditors
ly stipulation, if one tenders the oath, it can be pleaded to an action
by the other also. 1. Where a pleading debtor swears, the thereby
gets the benefit of it too; and there-on with has been obtained free
a surety, according to Caelius and Celsinus, with-benefit the princi-
pal debtor as well: the oath operates in the same way as payment, and
hence it must be treated as being so in this case, always provided
that remedies are had to the oath in order to deal with the
contract itself and the matter at issue, and not merely with the pecu-
liar of the party swearing. 2. If a man has produced to produce
before before the Court, and I tender him the oath, he ought to
swear that he cannot produced to produce the person in question at
all, this will be no defence to my action, but if that he swears is
that he is not himself under any liability to it, he shall have a
distinction must be made, and the pleading can be worded by a
replication, (the question being) whether he swore on questioned on
the ground that after his proofs he had certainly produced the person
in question or because he had paid the debt; and a similar distinction
can be made with reference to a surety for a debt. 3. If two correal
debtors of a sum of money one took the oath this can be pleaded by
the-other as well. 4. An oath can be pleaded by way of exception not
only where the obligation is made in the notion with reference to
which he took the oath, but even in a different action, provided
only the same matter of fact is material for the purpose of the
latter suit as, for instance, where an oath has been tendered for is
concerning with a action on a mandate or a case of voluntary agency
or a partnership or with any other similar action, and where a pecu-
liar condition is brought forward or the case fought the truth as
the oat action signifies of the other. 5. If a man swears that he did
not commit a robbery, he cannot defend action from this oath in
an action for theft or a condictio (further), as that is a distinct
offence, being one which can in fact be committed separately. 6. If
an action is brought against a tenant on hypothec (or lease), on
the ground, it may be, of his having cut down trees, he cannot be
charged-he did not cut any, then, if he is not otherwise on the lea-
of the Twelve Tables under the head of trees cut down, or the Lex
Aquilia for wrongful damage, or by application for an invalid deed
of sale, he can make a good defence by pleading his oath. 7. If
a woman swears that she did not remove her husband's goods
[illegible] of a divorce, this does not enable her to defend herself
by the exception in case she is sued in an action to recover the goods,
as that if she included that they are her own property, another case
is required of the other part. If she can swear (of the nature)
was that the goods were her own, this affords a defence to an action
for removal. In short, the general rule is that, even where it is
a different action in which any [illegible] one, as capitis
founded or the oath offered in the purpose. 8. Accordingly, there
a man swears that Judgment was [illegible], even though

he is sued on a judgment founded on a promise by stipulation that the order of the Court should be obeyed, he will have a good exceptio. If, on the other hand, he should be sued on the promise that the order should be obeyed, and he thereupon swears that he was not bound to pay, it does not follow that he has a good exceptio; as it is possible that there is nothing payable on the (original) stipulation, although judgment was pronounced (against him): unless, indeed, what he meant to swear to was that he was not even ordered to pay. 9. Again, Pomponius says that where a plaintiff swears that a theft was committed of property of his, he does not thereupon acquire good ground for a condictio as well (as an action for theft). 10. Add that seeing that, under this part (of the Edict), the oath furnishes matter both for an action and an exceptio, if the defendant takes an oath out of court, on tender by the plaintiff, that he is not bound to pay and then the plaintiff takes an oath, on tender by the defendant, that he has a right to demand payment, or the order is the inverse, the claim founded on the later oath will be held to have the greater weight; but this will not prejudge the question as to the other party having committed perjury; the subject of inquiry in the action not being whether the defendant was under an obligation to pay, but whether the plaintiff swore that he was."

30 PAULUS (on the Edict 18) "According to Pedius, where a man swears, in an action in which the amount claimable is increased by the defendant's denial of liability, that something is owed him, he acquires a right to ask for the simple amount only, and not for twofold; as it is amply sufficient for the plaintiff that he should be relieved from the necessity of proving his case, since, setting aside this part of the Edict, the right of action for twofold remains unimpaired; and it may very well be said that, in a case such as the above, it is not the main question that is put in issue, but simply the plaintiff's oath is allowed to take effect. 1. If I swear that you are bound to hand over to me Stichus, there being no such slave existing, you, the defendant, are not bound to give me even so much as the man's value, except it be on the ground of theft or in consequence of default on your part; in such cases the value has to be given, even if the slave is already dead. 2. If a woman swears that ten are owing to her for dos, that entire sum must be given; but, if she swears that she gave ten by way of dos, the inquiry will leave alone the one point whether the sum was given, but it will be treated as given, and such part of it as ought to be returned to her will have to be handed over. 3. In an actio popularis (where anyone who likes can sue) an oath which a party has been made to swear will be available against a third person only where it was called for in good faith, since, indeed, even where a man takes the regular proceedings, this does not preclude an actio publica (on behalf of the State), unless the proceedings were collusive. 4. If a freedman, on his patron tendering the oath, swears that he is not his freedman, the oath must be upheld, so that no demand for services can be entertained, nor any order made for bonorum possessio contra tabulas. 5. If I swear that I have a right to have a usufruct conveyed to me, it ought to be granted only on the terms of my giving an undertaking that I will enjoy it in accordance with the judgment of an impartial arbitrator, and that, when the usufruct expires, I will make over the property."

## III.

## ON SWEARING TO THE CLAIM.

4 THE SAME (on the Edict 36) "Let us consider who it is that can take the oath in a case of proceedings against a guardian, and

III.

ON DEFAULT OF THE CLAIM.

against whom he can take it. No doubt the ward himself cannot take it, if under age; this has been very often declared by rescript. But the Divine Brothers laid down that the guardian himself cannot be compelled to swear, or the mother of the ward be allowed to do so, even if she should be prepared to do it, as it was held to be going too far to allow that guardian should, without knowledge of the facts and without their own consent, in a matter involving gain for the benefit of another, encounter over and above the risks of false swearing. It is also provided by rescripts of our Emperor and his Divine Father that curators of a ward of a minor (adolescens) must not be compelled to swear to a claim. Still, if guardians or curators desire to show so much regard to the wards or minors under their care, the authority of the law need not stand in the way of a termination of this kind being put to a trial to which such parties are committed; seeing that the valuation made by oath must be considered from the point of view of the advantage not of the party himself who swears, but of his principal, on whose behalf an account of the guardianship is demanded. At the same time the minor can take the oath if he likes. 1. The person who should tender the oath is the judge; certainly, if anyone else tenders it or the oath is sworn without being tendered at all, the religious sanction will not exist and there will be no oath; this is laid down by enactments of the present Emperor and his Divine Father. 2. There is no restriction as to the amount which may be sworn to; still, it is a question whether the judge may not set a limit to the oath, so as to keep the terms of it within a certain figure, for fear lest the party should seize the occasion offered him and swear to a value beyond all bounds. It is certainly held to be within the judge's discretion to tender the oath or to refuse it; and it may well be asked whether one who has it in his power to decline to tender the oath is not equally free to set limitations to the terms of it; which, in fact, is within the discretion of a judge who acts in good faith. 3. Again, we may consider whether the judge is not able, after tendering the oath, to decline to follow it, and either to dismiss the case altogether or even to order the defendant to pay a smaller sum in the way of damages than was sworn to, and the better opinion is that, on very special grounds, and on the discovery of further evidence, this may be done. 4. Add that in a case of negligence it is settled that the oath is not to be tendered, but a valuation must be made by the judge."

## IV.

## ON THE CONDICTIO TO RECOVER A THING GIVEN FOR A CONSIDERATION WHERE THE CONSIDERATION FAILS.

6 THE SAME (Disputations 3) "If a stranger gives a dos for a woman and makes an agreement that, in whatever way the coverture comes to an end, the dos is to be restored to him, but, after all, no marriage takes place, then, seeing that the agreement made had reference only to events which occur subsequently to marriage, and no marriage ensued, the question may arise whether the condictio is open to the woman or to the party who gave the dos. However the probability is that the man who gave the dos had an eye to his own interest in view of this case too; as a matter of fact a man who gave in consideration of an expected marriage can, if the marriage was not carried out, bring a condictio as if on the ground that the consideration had failed,

unless it should be the case that the woman shows by the most conclusive proofs that his object in doing it was to benefit the woman rather than himself. But even if a father gives the dos for his daughter and the above agreement is made, then, unless the intention was clearly different, according to Larcellus, the father has a right to bring a condictio."

7 JULIANUS (Digest 16) "A man who believed himself to owe a sum of money to a woman promised her intended husband at her request to pay it to him by way of dos and paid it accordingly; after which the marriage never took place: the question was asked whether the man who paid the money or the woman herself was the person entitled to bring an action for return of it. Nerva an Atilicimus held that since the man believed that he owed the money, but he could have protected himself (if he had been sued) by an exceptio of dolus malus, he could bring the action himself. Had he, they said, made the promise knowing that he owed the woman nothing, the right of action would have been the woman's, because she would have a right to the money; but if he had really been debtor and had paid by way of an antenuptial gift, and then no marriage had taken place, he would have been entitled to bring the condictio himself, and nothing would remain in regard of the woman's title to be paid the debt except this, that the man who owed it would simply have been compellable to assign to her his right to bring a condictitious action and would be under no further liability. 1. When land is delivered by way of dos, then, if the marriage does not take place, it can be demanded back by a condictio; produce too can be asked for in the same way. There is a similar rule as to a female slave and children of the same."

8 NERATIUS (Parchments 2) "With regard to what we read in Servius's book on dowers, namely, that if a marriage has taken place between persons either of whom has not reached the proper age for marriage, anything that has been already given by way of dos can be recovered, we must understand this to mean that, if a divorce takes place before both persons have reached the proper age, the money can be recovered, but so long as the two parties continue to cohabit as husband and wife, the money can as little be demanded back as can property given by an unmarried woman to her intended husband by way of dos, so long as the tie of betrothal remains between them: the fact being that whenever anything is given with that object before the marriage takes place, then, seeing that it is given under such circumstances that it may become a fully established dos, it cannot be asked back so long as the possibility remains of its being so fully established."

9 PAULUS (on Plautius 17) "If I were going to give (money) to a woman (by way of dos), and, at her request, I paid it to her intended husband, but no marriage took place, the woman can have a condictio for the money. But if I contracted with the intended husband and gave him the money in order that, if the marriage ensued, the woman should get the dos, and, if it did not ensue, the money should be returned to me, it is, as it were, given for a purpose and, the purpose failing, I can have a condictio for it against the intended husband. 1. If a man should, in consequence of a mistake, promise a woman's intended husband, at her request, to pay him a sum of money which he did not really owe her, and the marriage should take place, he cannot meet an action by the husband with the plea of dolus malus; as the husband is acting on his own account, he is guilty of no fraud, and he ought not to be disappointed, as he would be if he were compelled to have a wife who had no dos. Consequently the promisor has a right to bring a condictio against the woman, by which he can either ask that she should make good what he gave the husband or else that he should be released, if he has not yet paid. Should the husband sue for the money on dissolution of the marriage, there ought to be a valid bar to the action in respect of so much only as would have come to the woman."

unless it should be the case that the woman above by the most conclusive proofs, that she object in doing it was to benefit the woman rather than herself. Not even if a father gives the dot for his daughter only the above agreement is made, then, unless the intention was clearly different, according to Iavolenus, the father has a right to bring a condictio."

2 PAULUS (Plautius IX) "A man who relieved himself to one's pan of money to a woman promised for intended husband at her request to pay it to him by way of dos, and paid it accordingly after which the marriage never took place: the question was raised whether the money can be paid the money or the woman herself was the former entitled to bring an action for return of it. Marcus Antistius held that since the man believed that he owed the money, but he could have procured himself (if he had been mad) by an exception of dolus malus, he could bring the action himself. And so, they said, made to procure (saying that he owed the woman nothing), the right of action could have been the woman's, because she would have a right to the money but if she had really been better and had paid by way of an interposital gift, and then no marriage had taken place, he would have been entitled to bring the condictio himself, and nothing would remain to request of the woman's title to be paid the debt except this, that the one who owed it would clearly have been compellable to assign to her his right to bring a condictive action and would be under no further liability. When land is delivered by way of dos, then, if the marriage does not take place, it can be demanded back by a condictio praeceptis too. One is meted for in the same way. There is a similar rule as to a female slave and children of the same."

3 MARCELLUS (Digestorum X) "It ought rightly be what we read in Julian's book on Digests, namely, that if a marriage has taken place between persons of whom has not reached the proper age, the money can be recovered, we must understand this to mean that, if a divorce took place before both persons have reached the proper age, the money can be recovered, but no long as the two parties continue to consult as husband and wife, the money can no likely to demanded back as can properly given by an unmarried woman to her betrothed husband by way of dos, so long as the tie of betrothal remains between them. The fact being that whenever anything is given with that object before the marriage takes place, then, people that it is given under such circumstances that it may become a fully established dos, it cannot be meted back so long as the possibility remains of its being so fully established."

3 PAULUS (on Plautius IV) "If I were going to give (money) to a woman (by way of dos), and, at her request, I paid it to her intended husband, but no marriage took place, the woman can have a condictio for the money. But if I contracted with the betrothed husband and gave him the money in order that, if the marriage ensued, the woman should get the dos, and, if it did not ensue, the money should be returned to me, it is, as it were, given for a purpose and, the purpose failing, I can have a condictio for it against the betrothed husband. If, if a man should, in consequence of a mistake, pretend that a woman betrothed husband, at her request, to pay it a sum of money by way of dos, and she did not really owe it, and the marriage should take place, he cannot avert an action by the husband with the plea of bona vacant as the husband be neither of his own account, be in guilty of no fraud, and he ought not to be disquieted, as he would be if he were compelled to pay a wife who had to him. Consequently the praetor has a right to bring a condictio against the woman, by which he can either ask that she should make good what by gave the husband or else that she should return, if in fact not yet paid. Should the husband be evicted in reference, if in fact not yet paid. Should the husband the for the money on dissolution of the marriage, there ought to be valid bar to the action in respect only as would have come to the woman."

10 JAVOLENUS (on Plautius 1) "If a woman, intending to give a dos to a man whom she was about to marry, gives him a formal discharge as to a sum of money which he woes her, but the marriage does not take place, she will have a good right of condictio against him for the money; as it makes no difference, where the money came to him without ground, whether it was by direct payment or by formal discharge."

V.

ON THE CONDICTIO ON THE GROUND OF AN IMMORAL OR

UNJUST CONSIDERATION.

4 ULPIANUS (on the Edict 26) "The same rule holds where money is given as the price of lewdness, or where a man who is detected in the act of adultery pays to be let go, as there is no right of action to recover the money; this is laid down by Sabinus and Pegasus. 1. Again, if a thief gives money to avoid being given up, inasmuch as it is a case of immoral behaviour on the part of both parties, there is no action to recover. 2. But, whenever the immoral behaviour occurs on the part of the receiver alone, according to Celsus, there may be an action for return of the money; for instance, where I give you money on the understanding that you will not do me wrong. 3. Still money given to a harlot cannot be recovered at law, so Labeo and Marcellus tell us; this however is on a different principle, as the point is not that there is immoral behaviour on both sides, but on the part of the giver only; the woman acts immorally in being a harlot, but, being one, she does not act immorally in taking the money. 4. If I pay you something as the price of information, viz. for you to let me know where my runaway slave is, or some thief who stole my property, there can be no action brought for return of what I gave, as there was nothing immoral in your receiving it. But if you take money from my runaway which he gives to induce you not to give information about him, I can bring a condictio for it as though you were a thief; again, if the actual thief or the companion of a thief or of a runaway slave received money from me as the price of information I should say that a condictio can be brought."

VI.

ON THE CONDICTIO FOR MONEY (PAID) THAT WAS NOT DUE.

8 PAULUS (on Sabinus 6) "If any payment is made to a wife by a third person on account of a husband who is unable to discharge his debts, the person so paying cannot sue to have it returned, as at all events it is a debt due to the wife."

9 ULPIANUS (on the Edict 66) "In fact, even the husband, if, when completely insolvent, he gives his wife the dower, is so placed that he cannot sue to have it back."

VII.

ON CONDICTIO FOR WANT OF GROUND.

5 PAPINIANUS (Questions 11) "A woman in view of a marriage with her maternal uncle gave a sum of money by way of dos, but did not marry him. The question has been asked whether she can sue to have the money returned. To this I said that, when money is paid on a ground which is immoral on the part of both giver and receiver, there is no right of condictio, and, where both are equally guilty, the person in possession has the better right; adding that I supposed that anyone who followed that line of argument was likely to give the opinion that the woman could not bring a condictio; but that nevertheless it could be properly said on the other side that in the instance before us it was not so much a case of an immoral ground as of no ground at all, it being in fact impossible that the money which was given should be turned into a dos, as the object in view of which it was given was not illicit intercourse but marriage. 1. A stepmother gave money by way of dos for a marriage with her step-son, similarly a daughter-in-law for marriage with her father-in-law, but no marriage took place. At the first glance it looks as if there were no right of condictio to recover the money, because it is a case of incest by universal law; nevertheless, in these cases it is still clearer that there was no ground at all for the giving of dos; consequently there is a right of condictio."

THIRTEENTH BOOK.

I

ON THE CONDICTIO FURTIVA.

19 PAULUS (on Neratius 3) "Julianus gave it as his opinion that, where a daughter removed (her husband's) goods, a condictio must be allowed against her father in peculium (to the extent of what her father allows her)."

V

ON A CONSTITUTUM OF MONEY.

1 ULPIANUS (on the Edict 27) "In this Edict the Praetor favours natural justice, as he maintains assurances by constitutum made in pursuance of agreement, seeing that to disappoint credit given is a serious matter. 1. The Praetor says:—'Where a man makes a constitutum of money owed' (etc.). The word 'man' must be taken to mean man or woman, as women too are bound by a constitutum of money, provided they are not guaranteeing a debt. 2. Nothing is said in the Edict as to the case of a boy under age; however, the boy is not bound by a constitution without the concurrence of his guardian. 3. It has been asked whether a son under potestas is bound, if he makes a constitutum. In my opinion the truth is that he is bound by his constitutum and his father is bound de peculio. 4. If a person has made a stipulation which was inoperative, but his real wish was to make a stipulation and not to

JAVOLENUS (Questions 11) "A woman is vice of a marriage with her maternal uncle gave a sum of money by way of dos, but did not marry him. The question has been asked whether she can now do have the money returned. To this I said that, when money is paid on a ground which is immoral on the part of both giver and receiver, there is no right of condictio, and, where both are equally guilty, the person in possession has the better right; adding that I suppose that anyone who followed that line of argument was likely to give the opinion that the woman could not bring a condictio; but that nevertheless it could be properly said on the other side that in the instance before us it was not so much a case of an immoral ground of no ground at all, it being in fact impossible that the money which was given should be turned into a res, as the object in view or which it was given was not illicit intercourse, but marriage. I. a stranger gave money by way of dos for a marriage with her step-mother, similarly a daughter-in-law for marriage with her father-in-law, but no marriage took place. At the first glance it seems as if there were no right of condictio to recover the money, because it is a case of locus by universal last nevertheless, in these cases it is still clearer that there was no ground at all for the giving of dos; consequently there is a right of condictio."



I

IN THE CONDICTIO MUTUATA.

PAULUS (on Sections 3) "Whatever else it be his opinion must where a daughter removed (for instance) money, a condictio must be allowed against her father in question (to the extent of what her father allows her)."

V

ON A CONDICTIONUM OF MONEY.

ULPIANUS (on the Edict 27) "In this Edict the Praetor invokes natural equity, to be materials considered by consideration made in pursuance of agreement, seeing that to misconstrue equity lies in a serious matter. If the Praetor says--'Where a sum has been paid on account of money owed (etc.)'. The more 'real' must be taken as such or money owed (etc.). The more 'real' must be taken as such or money owed (etc.). The more 'real' must be taken as such or money owed (etc.).

have a constitutum given him, the proper view is that he cannot bring an action on constitutum, because what was done was not with the intention of making a constitutum, but of giving a promise. 5. The question has been asked whether the constitutum can be for anything other than what is due. Since, however, it is now good law that one thing can be given in discharge of a contract, in the place of another, there can be nothing to prevent a constitutum being made of something other than what is due; for instance, where a person owes a hundred and makes a constitutum of corn of that value, I should say the constitutum is valid. 6. A constitutum of a debt can be made, on whatever ground it is owing, that is to say on whatever kind of contract, whether it be one to give a specific sum or an unliquidated amount, and whether it is a purchase money owed in pursuance of a sale or money payable by way of dos or on the ground of guardianship or of any contract whatever. 7. Even a debt owing a natural law will be enough. 8. Add that a man who is liable to an 'honorary' action and not by civil law will be bound by a constitutum; a debt owing in honorary law is held to be a debt. Hence too, if a constitutum is made by a paterfamilias or by the owner of a slave of a debt for which he can be sued in an action de peculio, the liability will extend to the amount which there was in the peculium when the constitutum was made; and, in fact, if he made it for anything over and above that amount on his own account, he will not be liable in respect of the excess."

## FOURTEENTH BOOK.

### III.

### ON THE INSTITORIAN ACTION.

7 ULPIANUS (on the Edict 28) "And further, if anyone voluntarily acting in my affairs, appoints (an institor), and I ratify the act, the same rule must be laid down. 1. It matters little who is the institor, male or female, free, or your own slave or the slave of someone else. Also (it is indifferent) who the person appointing is; for if a woman has appointed, the institorian action will be available, as the exercitorian is, and if a woman is appointed she herself will also be liable. Moreover, if a woman under potestas, or a female slave, is appointed, the institorian action is available. 2. A child who is institor binds the person who appointed him by the institorian action, since he has himself to blame for appointing him,

### VI.

### ON THE SENATUSCONSULTUM MACEDONIANUM.

9 ULPIANUS (on the Edict 29) "But if, when he has become a paterfamilias, he gives a thing by way of pledge, the rule to be laid down will be that the exceptio on the senatusconsultum is to be refused to him, to the amount of the value of the pledge. 1. If the son pays to the creditor money which a third person has given to him as a present, can the father bring a specific vindication for this or recover it (by condictio)? And Julianus says that if the money was actually given to him on the condition that he should pay

## III.

## OF THE INSTITUTORIA ACTION.

DEFINITION (on the Edict 29). "Act Institor", if anyone voluntarily acting in any affair, appoints (an Institor), and I notify the act, the same rule must be laid down. 1. It matters little who is the Institor, male or female, free, slave, our slave or the slave of another's slave. Also (it is indifferent) who the person appointing be (female also. 2. Also (if it is indifferent) who the person appointing be) for if a woman has appointed, the Institorian action will be available, as in the case of the exercitorian is, and if a woman has appointed a boy under puberty, or a female slave, is appointed, the Institorian action is available. 3. A child who is Institor frees the person who appointed him by the Institorian action, since he has placed to views for appointing him.

## IV.

## ON THE SENATUSCONSULTUM MACEDONIANUM.

DEFINITION (on the Edict 29). "But if", when he has become a paterfamilias, he gives a thing by way of pledge, the rule to be laid down will be that the suretie on the vadimonium is to be released to him, to the amount of the value of the pledge. 1. If the son pays to the creditor money which a third person has given to him on a present, can the father file [illegible] for it? And Julianus says that if the money was actually given to him on conditions that he should pay

it to the creditor, it is to be considered as having passed immediately from the donor to the creditor, and the moneys become the property of the receiver; if indeed it was simply given to him, the son had no power of alienation of the moneys, and therefore, if he pays, the condictio is available to the father in any case. 2. This senatusconsultum applies also to women in potestas, nor is it material if they are alleged to have acquired ornaments with the money; for by the decree of the most distinguished order an action is refused also to one who has lent money to a filiusfamilias, and it does not matter whether the coins have been consumed or are extant in the peculium. Much more therefore will the contract of one who has lent money to a filiadamilias be disapproved by the rigour of the senatusconsultum. 3. Relief is given not only to the filiusfamilias and to his father, but also to his guarantor, and to his mandator, who also themselves have the resource of the action on mandatum, unless indeed they intervened with the intention of making a gift, for then as they have no right to fall back on him, the senatusconsultum will have no operation. But, further, if they did not intervene with the intent to make a donation, but at the wish of the father, the whole contract will be considered to have been approved by the father. 4. And yet those who have intervened on behalf of the filiusfamilias without the father's consent cannot recover on paying, for so the Divine Hadrian also enacted, and it may be said that they will not get their money back. And yet they are protected by a perpetual exceptio; but so also is the son himself, but nevertheless he does not recover, for only those cannot recover what they have paid who are freed from an action by way of penalty on the creditors, and not because a law aimed at absolutely destroying their liability.

17 THE SAME (Sentences 2) "If a filiusfamilias borrows money for the purpose of giving it as a marriage portion on behalf of his sister, the father will be liable to the action for money applied to his concerns; for, if the girl dies married, a right to recover the marriage portion is given to him."

## FIFTEENTH BOOK.

### I.

### ON THE ACTION ON THE PECULIUM.

19 ULPIANUS (on the Edict 29) "Hence the question arises whether, if an action on the peculium has been brought, in respect of the ordinary slave, action can still be brought in respect of the underslaves; and I think it cannot. But if an action has been brought on the peculium of the underslave, there may also be an action on the peculium of the ordinary slave. 1. There may be, belonging to me, a peculium of a twofold legal nature; suppose there is a dotal slave; he may have a peculium which concerns me; he may also have one which concerns my wife. For what he has acquired in the husband's affairs or by his labour, this belongs to the husband, and accordingly if he has been appointed heir or a legacy has been given to him, in contemplation of the husband, Pomponius says that the latter is not under an obligation to hand this over. If, then, an action is brought against me on a contract which concerns me, can I deduct everything, whatever it may be, which is due to me, whether in an affair of mine or in one which concerns my wife? Or do we in fact distinguish the origins of the business, as referring to two peculia, in such a way that regard is

it to the creditor, it is to be considered as money paid immediately
from the donor to the creditor, and the money become the property of
the receiver if indeed it was simply given to him, the not had no power
of alienation of the money, and therefore, if he pays, the condictio
is available to the latter in any case. 3. This constitutum ap-
plies also to woman in potestate, nor is it material if they are alienae
to have acquired ormmenta with the money for by the decree of the
most distinguished order an action is refused also to one who has lent
money to a filiusfamilias, and it does not matter whether the sons
have been conversed or are extant in the peculium. Much more therefore
will the contract of one who has lent money to a filiusfamilias be
disapproved by the favour of the senatusconsultum. 3. Relief is given
not only to the filiusfamilias and to his father, but also to his
guarantor, and to his mandator, who also thereafter have the remedy
of the action on mandatum, unless indeed they intervened with the
intention of making a gift, for then an they have no right to fall
back on him, the senatusconsultum will have no operation. But further,
if they did not intervene with the intent to make a donation, but at
the risk of the father, the whole contract will be considered to have
been approved by the father. 4. And yet those who have intervened on
behalf of the filiusfamilias without the father's consent cannot re-
cover on pignus, for no the Divine Section also enacted, and it may
be said that they will not get their money back. And yet they are
protected by a perpetual exception; let so also in the non numerati,
but nevertheless he does not recover, for only those cannot recover
what they have paid who are freed from an action by way of penalty
or the creditor, and not become a lay client at absolutely lawful
right liability."

---

17 — THE SAME (Instances 5) ... [illegible]
the purpose of giving it as a mortgage portion or towards of his stator,
the father will be liable to the action for money applied to his con-
cerns for, if the filiusfamilias received, a right to recover the mortgage
portion is given to him."

---

## RIVERBANK RIOT.

### I.

### OF THE ACTION OF THE DOCK FRONTAGE.

10 [illegible] (on the Point 52). "Upon the question arises whether,
if an action on the peculium are for arrears, in respect of the exhi-
bition many matter can still be brought in respect of the waterfrontage
and I think it cannot. But if an action has been brought on the
peculium of the ephebiare, there may also be an action on the peculium
of the ordinary slave. 1. There may be, following to me, a peculium
of a vested legal entirety although there is a total alienation by any
[illegible] which concerns not by any who have the which concerns
by vile. For what be has acquired in the husband's affairs or by his
labour, this belongs to the husband, and accordingly if he has been
opposed suit or a lawsuit has been given to him, in contemplation of
it a husband, Sceptius says that the latter is not under an obligation
to bond this over. If, then, an action is brought against me on a
contract which concerns me, and I father everything, whatever it may
be, which is due to me, whether in an affair of mine or in any which
concerns my vital. Or be on in that distinguish the criteria of the
[illegible], in relation to the [illegible], in such a way that regard is

had to the origin of the debt which is sued on, so that if the action is in fact brought on a contract which concerns the wife, I can deduct what is due from that peculium, if on a contract which concerns me I can deduct my onw claim? And this question is more luminously treated in the case of a usufructuary, whether an action on the peculium can be brought against him only on that contract which concerns him, or on any. Here Marcellus tells us that the usufructuary is also liable, and on any contract, for he who contracts contemplates the whole peculium of the slave as his property. Clearly, he says, this must be admitted, in any case, that, when the person whom the matter concerns has been first sued, the other, for whom there was no acquisition (under the contract), may be sued for the residue. And this is the more probable view and is approved by Papinianus. The same must be said in the case of two bona fide buyers. But in the case of the husband it is better to say, simply, that he is liable to the action on the peculium. But if the husband has paid something on account of a slave of this kind, can he deduct it as against the wife suing on account of dos? And he says that if what was paid to the creditor concerns the peculium of each kind, it ought to constitute a diminution of each, proportionately, and it can be gathered from this that if the contract refers to either one of the peculia, there will be in the one case a deduction for the wife alone, in the other there will not, if the contract referred to that peculium which remained with the husband. 2. Sometimes an action on the peculium is given even to the usufructuary himself against the master, for example, if he has a peculium in respect of the latter, but in respect of the former has either none or less than is due to the usufructuary. The same consideration may give a result in the contrary sense, although in the case of two owners the action on partnership or that for division of common property suffices.'

36 ULPIANUS (Disputations 2) "It is a debateable point whether, in contracts resting on bona fides, the father or master should be liable on the peculium or for the full amount, just as it has been discussed in the action on dos, where a dos has been given to a son, whether the father is to be sued only to the extent of the peculium. However, I am of opinion that the action is available not only on the peculium, but also so far as, beyond this, the woman has been tricked and defrauded by the dolus malus of the father, for, if he holds the property and is not ready to give it up, it is fair that he should be condemned to the extent of its value. For Pomponius has said that what is expressly laid down in the case of a slave who has received a thing in pledge is to be held applicable also in the other bonae fidei actions. For, again, if a thing has been given in pledge to a slave the action is available not only on the peculium and for what has been applied to (the master's) concerns, but it has also this additional clause, 'and so far as the plaintiff has been tricked and defrauded by dolus malus of the master.' Now the master may be considered to be acting with dolus if he will not restore when he has the power of restoring."

38 AFRICANUS (Questions 8) "I have deposited 10 with a filiusfamilias and I bring an action on deposit on the peculium. Although the son owes the father nothing and holds these 10, he held nevertheless that the father was none the more liable to be condemned, if there is no peculium beyond this, for this money, as it remains mine, does not form part of the peculium. He says, further, that if any other person whatsoever is suing on the peculium, there cannot be the least doubt that it is not to be reckoned. And thus I ought to bring an action for production, and, upon production, a vindicatio. 1. If his future wife has promised to a filiusfamilias a certain sum by way of dos, and, a divorce being effected, brings an action on the dos against the father, ought she to be released from the whole promise, or with a deduction of what the son owes the father. He

[illegible]

answered that she was to be released from her whole promise, since even if an action was brought against her on the promise, she could certainly defend herself by the exceptio doli mali. 2. Stichus has in his peculium Pamphilus who is worth 10, and this Pamphilus owes the master 5; if an action on the peculium is brought on account of Stichus, he held that the value of Pamphilus ought to be included, and, indeed, the whole value, with no deduction of what Pamphilus owes the master, for no one can be understood to be himself in his own peculium: thus in this case the master will suffer a loss, just as he would if he had lent to any other of his slaves who had no peculium. And he says that it will appear more clearly that this is so, if the case is put of the peculium being left to Stichus, who, if he sues under the will, is certainly not compellable to suffer a deduction for what his underslave owes, except out of the peculium of the latter; otherwise the result would follow, that if the underslave owes the master as much (as the peculium), the slave himself will be considered to have nothing in the peculium, which is plainly absurd. 3. I lent money to a slave whom I had sold to you: the question arose whether the action on the peculium against you should be given to me on the terms that there should be deducted whatever remained with me out of the peculium. But this is in fact not in the least true, and it will not be material whether I sue within a year from the time when I sold or afterwards, for, indeed, no action against me is given to other persons who contracted with him at that time. Moreover, on the other hand, if those who had previously contracted with this slave proceed against me, I may not deduct what he began to owe me after (the sale). From which it is clear that the liability of that peculium which has remained with me should have no connexion with contracts of a later time."

## III.

## ON THE ACTIO DE IN REM VERSO.

7 ULPIANUS (on the Edict 29) "And therefore, also, if the slave gives the master property of the peculium, the actio de in rem verso will not be available; and these propositions are correct. 1. Certainly, if the slave has borrowed money and pays it (to the master) with the intention of making a gift, where he does not wish to make him a debtor to the peculium, there is an actio de in rem verso. 2. That is not true which Mela says, that if you give silver to my slave, that he may make cups for you out of any silver he likes, and then, when the cups have been made, the slave dies, you have an actio de in rem verso against me, because I can bring a real action for the cups. 3. That is certainly true which Labeo says, that if the slave buys perfumes and unguents and devotes them to a funeral which concerned his master, there is considered to have been application to the master's concerns. 4. The same writer says that if I buy from your slave an inheritance which belonged to you, and I pay money to the creditors, and then you take this inheritance away from me, I shall recover it from you by an action on purchase, for there is considered to have been application to your concerns; for, again, if I buy an inheritance from a slave, with the view of setting off what was due to me from the same slave, though I have paid nothing, yet I shall recover by the action on purchase what has gone to the profit of the master. I, however, do not think that the buyer has an actio de in rem verso, unless the slave acted with the intent of applying the proceeds to the master's concerns. 5. If a filiusfamilias, having borrowed money, gives it as dowry for his daughter, there is held to have been an application to (his) father's concerns to the

III.

extent to which the grandfather was going to give (dowry) for the granddaughter. This opinion appears to me to be true only if he gave the money with the idea of acting in his father's business."

8 PAULUS (on the Edict 30) "And Pomponius says that it does not matter whether he gives it on behalf of his daughter or his sister or a granddaughter, issue of another son. We shall therefore say the same also if a slave has borrowed money, and given it by way of dowry, on account of his master's daughter."

20 SCAEVOLA (Responsa 1) "A father promised a dowry for his daughter, and agreed that he would maintain the daughter; as the father did not make this good, the daughter borrowed money from her husband, and she died married. I gave the responsum: if what was lent was expended on things without which she could not take care of herself, or maintain the slaves of the father, an actio utilis de in rem verso ought to be given. 1. The slave of one who was absent on sthte service lent money to the slaves of a ward, the tutor endorsing the memorandum of stipulation, which stated the tutor as the contracting party: the question was asked whether an action was available against the ward. I gave the responsum: if, having been given for the purposes of the ward, it was applied to his purposes, although for the better confirmation of the act of the slaves, the tutor promised, it may nevertheless be said that there will be an actio de in rem verso against the ward."

21 THE SAME (Digest 5) "A man married a filiafamilias, the father promising a dowry, and it was agreed between all parties that either the father or she herself should bear the cost of her maintenance: the husband lent her money, reasonably thinking that the father would give an allowance equal to what he had arranged to give his daughter: she employed these moneys in necessary purposes for herself, and on the slaves she had with her, and (his domestic affairs being entrusted to her) she applied a certain amount of her husband's money to the same purposes: thereafter, before the father has paid all the allowance, the daughter dies; the father repudiates the expenditure: the husband keeps possession of the property of the wife. I ask whether the actio de in rem verso lies against the father. The responsum was: if what was lent was spent on things without which she could not take care of herself or maintain the slaves of the father, an actio utilis de in rem verso ought to be given."

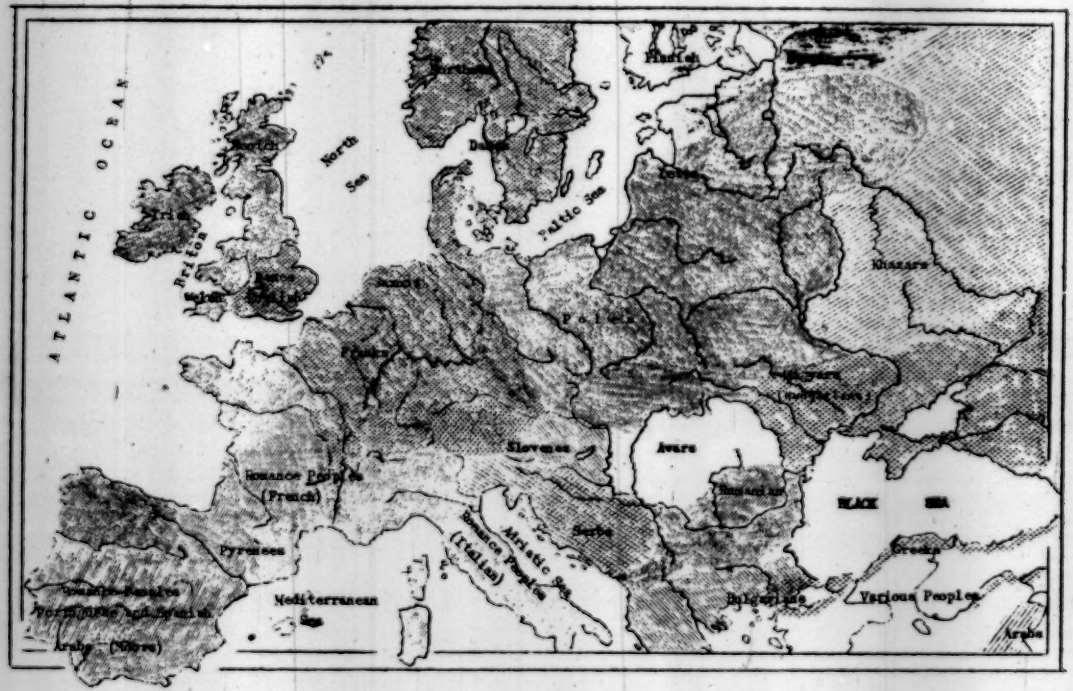
## IV.

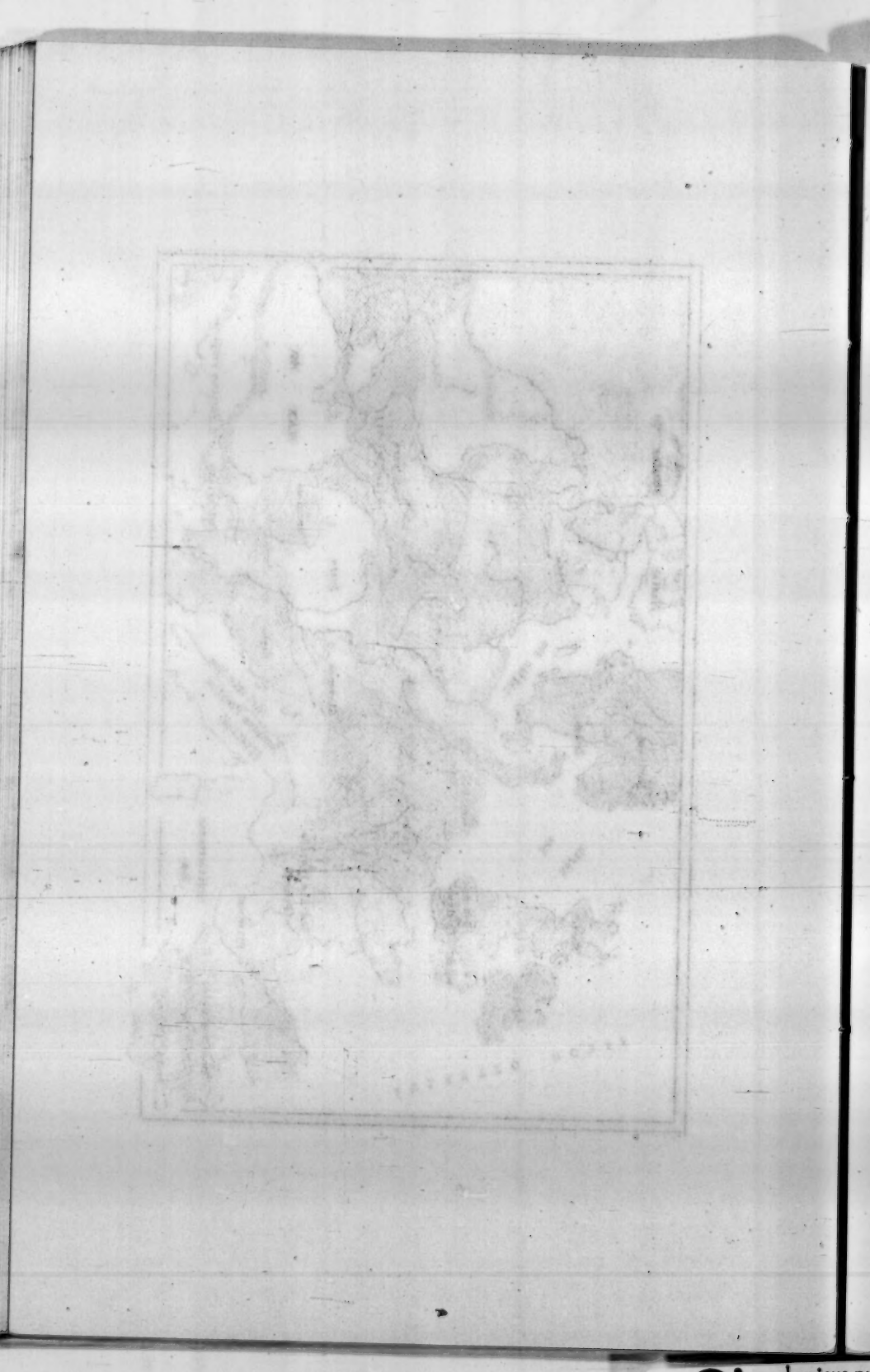
## ON THE ACTIO QUOD IUSSU.

2 PAULUS (on the Edict 30) "If a loan is made to the slave of a ward, with the authorisation of the tutor, I think that if the loan was to the advantage of the ward, an action should be given against the ward, 'quod iussit tutor.' 1. If a loan is made with the authorisation of the master of a female slave, or with that of the father of a girl, the actio quod iussu should be given against him. 2. If, with my authorisation, a contract is made with a third person's slave, and I afterwards buy him, I shall not be liable to the actio quod iussu, lest an action which was at the outset without effect, be validated by the course of circumstances."

# PART VII.

# MEDIEVAL


ATLANTIC OCEAN
North Sea
Baltic Sea
Picts
Scots
Britons
Irish
Saxons
Angles
Jutes
Danes
Franks
Poles
Slovenes
Avars
Khazars
Romance Peoples (French)
Pyrenees
Romance Peoples (Italian)
Adriatic Sea
Serbs
Bulgarians
BLACK SEA
Greeks
Various Peoples
Arabs
Mediterranean Sea
Arabs (Moors)



# THE BREAK UP OF THE FRANKISH EMPIRE

Great extent of Frankish Empire in 843

Tributary Slavic States in 843

To Moravia in 888

To Burgundy in 888

Boundry between East and West Frankish Kingdom in 870

Territory to Louis in 843

Territory to Charles in 843

INTRODUCTION

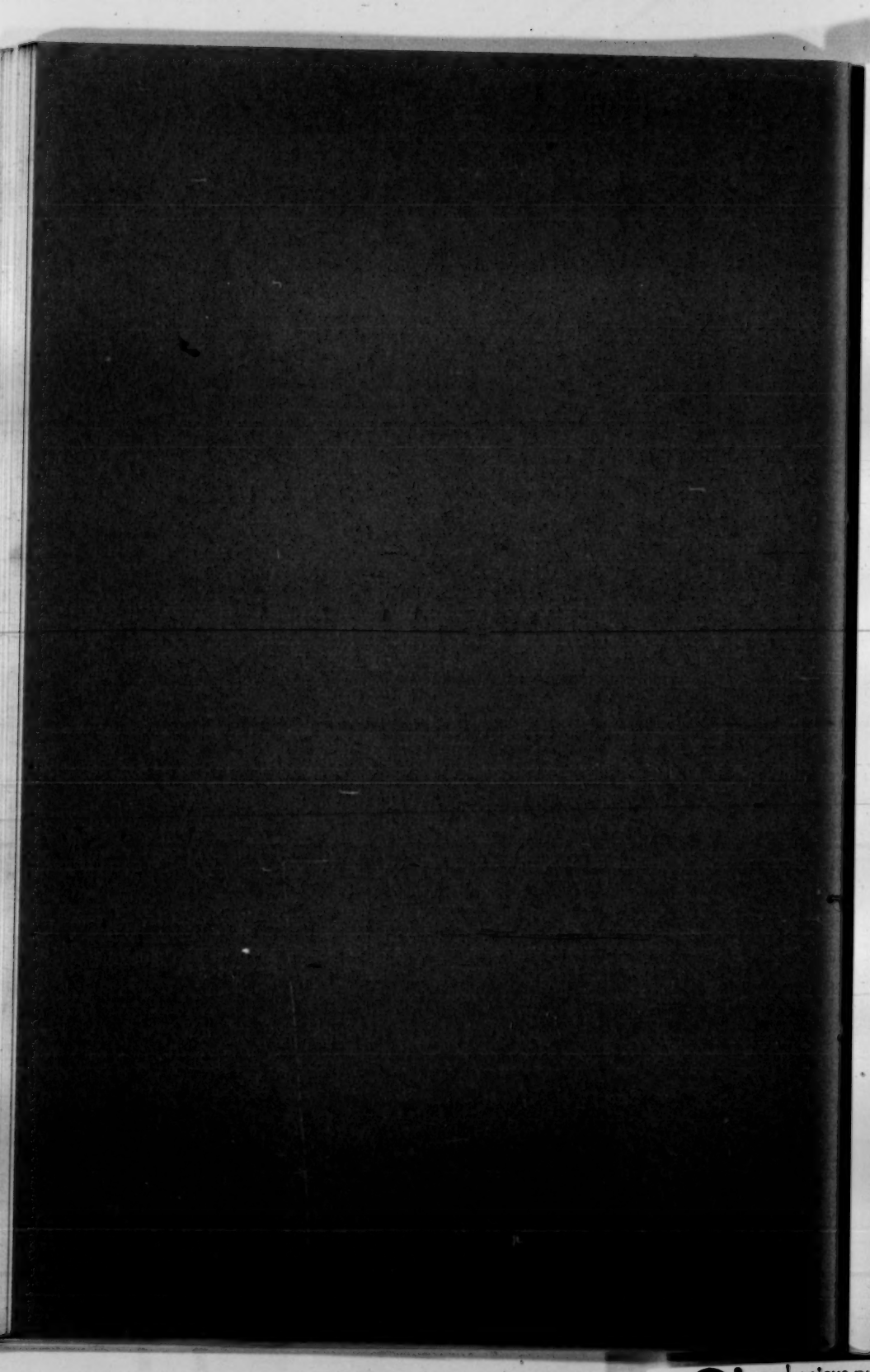
TO

THE FOLLOWING CHAPTER.

This--a systematic exposition of the actual legal status of woman, is arranged in a chronological order according to the following Codes. First, The Lex Salica, second, The Visigothic Code, third, The Laws of Howel according to, The Venedotian Code, The Dimetian Code and the Gwentian Code, and last a collection of ancient secular and ecclesiastical laws of England, comprising institutes enacted under Anglo-Saxon Kings from King Aethelbright to Cnut, The laws of King Aethelbright; Hlothhaere and Eadric, King Wihtraed, King Alfred, King Ine, Edward and Guthrum, King Aethelstan, King Edmund, King Ethelud and King Cnut, also the ecclesiastical laws from the seventh to the tenth century, such as the Cannons enacted under King Edgar, Laws of the Northumbrian Priests, Institutes of Polity Civil and Ecclesiastical, The Cannons of Aelfric's Pastoral Epistle and Ecclesiastical Institutes.

Again, it is important for the reader to remember at this time, that only those laws which actually govern the status of women are contained in this following chapter.

# LEX SALICA



# THE LEX SALICA

## TITLE I. CONCERNING SUMMONSES

1. "If anyone be summoned before the "Thing" by the king's law, and do not come, he shall be sentenced to 600 denars, which make 15 shillings (solidi)."

2. "But he who summons another, and does not come himself, shall, if a lawful impedient have not delayed him, be sentenced to 15 shillings, to be paid to him whom he summoned."

3. "And he who summons another shall walk with witnesses to the home of that man, and, if he be not at home, shall bid the wife or anyone of the family to make known to him that he has been summoned to court."

4. "But if he be occupied in the king's service he can not summon him."

5. "But if he shall be inside the hundred seeing about his own affairs, he can summon him in the manner explained above."

## TITLE XIII. CONCERNING RAPE COMMITTED BY FREEMEN

1. "If three men carry off a freeborn girl, they shall be compelled to pay 30 shillings."

2. "If there are more than three, each one shall pay 5 shillings."

3. "Those who shall have been present with boats shall be sentenced to three shillings."

4. "But those who commit rape shall be compelled to pay 2500 denars, which make 63 shillings."

5. "But if they have carried off that girl from behind lock and key, or from the spinning room, they shall be sentenced to the above price and penalty."

6. "But if the girl who is carried off be under the king's protection, then the "frith" (peace money) shall be 2500 denars, which make 63 shillings."

7. "But if a bondsman of the king, or a leet, should carry off a freewoman, he shall be sentenced to death."

8. "But if a freewoman have followed a slave of her own will, she shall lose her freedom."

9. "If a freeborn man shall have taken an alien bondswoman, he shall suffer similarly."

10. "If anybody take an alien spouse and join her to himself in matrimony, he shall be sentenced to 2500 denars, which make 63 shillings."

## TITLE XIV. CONCERNING ASSAULT AND ROBBERY

1. "If anyone have assaulted and plundered a freeman, and it be proved on him, he shall be sentenced to 2500 denars, which make 63 shillings."

2. "If a Roman have plundered a Salian Frank, the above law shall be observed."

3. "But if a Frank have plundered a Roman, he shall be sentenced to 35 shillings."

4. "If any man should wish to migrate, and has permission from the king, and shall have shown this in the public "Thing:" whoever, contrary to the decree of the king, shall presume to oppose him, shall be sentenced to 8000 denars, which make 200 shillings."

## TITLE XV. CONCERNING ARSON

1. "If anyone shall set fire to a house in which men were sleeping, as many freeman as were in it can make complaint before the "Thing:" and if anyone shall have been burned in it, the incendiary shall be sentenced to 2500 denars, which make 63 shillings."

## TITLE XVII. CONCERNING WOUNDS

1. "If anyone have wished to kill another person, and the blow have missed, he on whom it was proved shall be sentenced to 2500 denars, which make 63 shillings."

2. "If any person have wished to strike another with a poisoned arrow, and the arrow have glanced aside, and it shall be proved on him: he shall be sentenced to 2500 denars, which make 63 shillings."

3. "If any person strike another on the head so that the brain appears, and the three bones which lie above the brain shall project, he shall be sentenced to 1200 denars, which make 30 shillings."

4. "But if it shall have been between the ribs or in the stomach so that the wound appears and reaches to the entrails, he shall be sentenced to 1200 denars--which make 30 shillings--besides five shillings for the physician's pay."

5. "If anyone shall have struck a man so that blood falls to the floor, and it is proved on him, he shall be sentenced to 600 denars, which make 15 shillings."

6. "But if a freeman strike a freeman with his fist so that blood does not flow, he shall be sentenced for each blow--up to 3 blows--to 120 denars, which make 3 shillings."

## TITLE XIX. CONCERNING MAGICIANS

"If anyone have given herbs to another so that he die, he shall be sentenced to 200 shillings (or shall surely be given over to fire)."

## TITLE XIV. CONCERNING ASSAULT AND MURDER

1. "If anyone have assaulted and plundered a freeman, and it be proved on him, he shall be sentenced to [illegible] years, which make 2 abilities."

2. "If a Scots have plundered a Gallen Frank, the afore law shall be observed."

3. "But if a Frank have plundered a Scots, he shall be sentenced to 30 abilities."

4. "If any man should wish to disavow and has resistance from the king, and shall have flown title to the public "Ehlag" thereof, contrary to the decree of the King, shall freedom to oppose him, shall be sentenced to [illegible] years, which make 6½ abilities."

## TITLE XV. CONCERNING ARSON

1. "If anyone shall set fire to a house in which men were sleeping, or any freeman or serf in it can make complaint before the "Ehlag" and it anyone shall have been burned in it, the lawsuitory shall be sentenced to [illegible] years, which make 42 abilities."

## TITLE XVI. CONCERNING MURDER

1. "If anyone have wished to kill another person, and the flow have closed, he or who it was proved shall be sentenced to [illegible] years, which make 42 abilities."

2. "If any person have wished to strike another with a poisoned arrow, and the arrow have flanged only, and it shall be proved on him he shall be sentenced to [illegible] years, which make 63 abilities."

3. "If any person strike another on the head so that the brain appears, and the three toges what lie above the brain shall protect, he shall be sentenced to [illegible] years, which make 3C abilities."

4. "But if it shall have taken away the life of the wound so that the wound appears and reaches to the materia, he shall be sentenced to [illegible] years, which make 3C abilities-besides five abilities for the [illegible] price."

5. "If anyone shall have struck a man so that blood falls to the floor, and it be proved on him, he shall be sentenced to [illegible] years, which make 12 abilities."

6. "But if a freeman strike a freeman with his flat so that blood does not flow, he shall be sentenced for each flip-up to 3 flows-to [illegible] years, which make 3 abilities."

## TITLE XIX. CONCERNING MAGICIANS

"If anyone have given herbs to another to [illegible] that he shall be sentenced to [illegible] abilities (or he shall [illegible] over to [illegible]."

2. "If any person have bewitched another, and he who was thus treated shall escape, the author of the crime, who is proved to have committed it, shall be sentenced to 2500 denars, which make 63 shillings."

## TITLE XXIV. CONCERNING THE KILLING OF LITTLE CHILDREN AND WOMEN

1. "If anyone have slain a boy under 10 years-up to the end of the tenth-and it shall have been proved on him, he shall be sentenced to 24000 denars, which make 600 shillings."

3. "If anyone have hit a freewoman who is pregnant and she dies, he shall be sentenced to 28000 denars, which make 700 shillings."

6. "If anyone have killed a freewoman after she has begun bearing children, he shall be sentenced to 24000 denars, which make 600 shillings."

7. "After she can have no more children, he who kills her shall be sentenced to 8000 denars, which make 200 shillings."

## TITLE XXX. CONCERNING INSULTS

3. "If anyone, man or woman shall have called a woman harlot, and shall not have been able to prove it, he shall be sentenced to 1800 denars, which make 45 shillings."

4. "If any person shall have called another "fox," he shall be sentenced to 3 shillings."

5. "If any man shall have called another "hare," he shall be sentenced to 3 shillings."

6. "If any man shall have brought it up against another that he have thrown away his shield, and shall not have been able to prove it, he shall be sentenced to 120 denars, which make 3 shillings."

7. "If any man shall have called another "spy" or "perjurer," and shall not have been able to prove it, he shall be sentenced to 600 denars, which make 15 shillings."

## TITLE XLV. CONCERNING MIGRATORS

1. "If anyone wish to migrate to another village and if one or more who live in that village do not wish to receive him,-if there be only one who objects, he shall not have leave to move there."

2. "But if he shall have presumed to settle in that village in spite of his rejection by one or two men, then some one shall give him warning. And if he be unwilling to go away, he who gives him warning shall give him warning, with witnesses, as follows: I warn thee that thou may'st remain here this next night as the Salic law demands and I warn thee that within 10 nights thou shalt go forth from this village, After another 10 nights he shall again come to him and warn him again

within 10 nights to go away. If he still refuse to go, again 10 nights shall be added to the command, and the number of 30 nights may be full. If he will not go away even then, then he shall summon him to the "thing," and present his witnesses as to the separate commands to leave. If he who has been warned will not then move away, and no valid reason detains him, and all the above warnings which we have mentioned have been given according to law: then he who gave him warning shall take the matter into his own hands and request the "comes" to go to that place and expel him. And because he would not listen to the law, that man shall relinquish all that he has earned there, and, besides, shall be sentenced to 1200 denars, which make 30 shillings."

3. "But if anyone have moved there, and within 12 months no one have given him warning, he shall remain as secure as the other neighbours."

## TITLE XLVI. CONCERNING TRANSFERS OF PROPERTY

1. "The observance shall be that the Thungimus or Centenarius shall call together a "Thing," and shall have his shield in the "Thing," and shall demand three men as witnesses for each of the three transactions. He (the owner of the land to be transferred) shall seek a man who has no connection with himself, and shall throw a stalk into his lap. And to him into whose lap he has thrown the stalk he shall tell concerning his property, how much of it--or whether the whole or a half--he wishes to give. He in whose lap he threw the stalk shall remain in his (the owner's) house, and shall collect three or more guests, and shall have the property--as much as is given him--in his power. And, afterwards, he to whom that property is entrusted shall discuss all these things with the witnesses collected afterwards, either before the king or in the regular "Thing," he shall give the property up to him for whom it was intended. He shall take the stalk in the "Thing," and, before 12 months are over, shall throw it into the lap of him whom the owner has named heir: and he shall restore not more nor less, but exactly as much as was entrusted to him."

2. "And if anyone shall wish to say anything against this, three sworn witnesses shall say that they were in the "Thing" which the "Thungimus" or "Centenarius" called together, and that they saw that man who wished to give his property throw a stalk into the lap of him whom he had selected. They shall name by name him who threw his property into the lap of the other, and, likewise, shall name him whom he named his heir. And three other sworn witnesses shall say that he in whose lap the stalk was thrown had remained in the house of him who give his property and had there collected three or more guests, and that they had eaten porridge at table, and that he had collected those who were bearing witness, and that those guests had thanked him for their entertainment. All this those other sworn witnesses shall say, and that he who received that property in his lap in the "Thing" held before the king, or in the regular public "Thing," did publicly before the people, either in the presence of the king or in public "Thing"- namely on the Mallberg, before the "Thungimus"--threw the stalk into the lap of him whom the owner had named as heir. And thus 9 witnesses shall confirm all this."

## TITLE L. CONCERNING PROMISES TO PAY

1. "If any freeman or leet have made to another a promise to pay, then he to whom the promise was made shall, within 40 days or within such terms as was agreed when he made the promise, go to the house of that man with witnesses, or with appraisers. And if he (the debtor) be unwilling to make the promised payment, he shall be sentenced to 15 shillings above the debt which he had promised."

2. "If he then be unwilling to pay, he (the creditor) shall summon him before the "Thing" and thus accuse him: "I ask thee, 'Thungimus,' to bann my opponent who made me a promise to pay and owes me a debt." And he shall state how much he owes and promised to pay. Then the "Thunginus" shall say: "I bann thy opponent to what the Salic law decrees." Then he to whom the promise was made shall warn him (the debtor) to make no payment or pledge of payment to anybody else until he have fulfilled his promise to him (the creditor). And straightway on that same day, before the sun sets, he shall go to the house of that man with witnesses, and shall ask if he will pay that debt. If he will not, he (the creditor) shall wait until after sunset: then, if he have waited until after sunset, 120 denars, which make 3 shillings shall be added on to the debt. And this shall be done up to 3 times in 3 weeks. And if at the third time he will not pay all this, it (the sum) shall increase to 360 denars, or 9 shillings: so, namely, that, after each admonition or waiting until after sunset, 3 shillings shall be added to the debt."

3. "If anyone be unwilling to fulfil his promise in the regular assembly,-then he to whom the promise was made shall go to the count of that place, in whose district he lives, and shall take the stalk and shall say: oh count, that man made me a promise to pay, and I have lawfully summoned him before the court according to the Salic law on this matter: I pledge thee myself and my fortune that thou may'st seize his property. And he shall state the case to him, and shall tell how much he (the debtor) had agreed to pay. Then the count shall collect 7 suitable bailiffs, and shall go with them to the house of him who made the promise and shall say: "thou who art here present pay voluntarily to that man what thou didst promise, and choose any two of those bailiffs who shall appraise that from which thou shalt pay: and make good what thou dost owe, according to a just appraisal." But if he will not hear, or be absent, then the bailiffs shall take from his property the value of the debt which he owes. And, according to the law, the accuser shall take two thirds of that which the debtor owes, and the count shall collect for himself the other third as peace money: unless the peace money shall have been paid to him before in this same matter."

4. "If the count have been appealed to, and no sufficient reason, and no duty of the king, have detained him-and if he have put off going, and have sent no substitute to demand law and justice: he shall answer for it with his life, or shall redeem himself with his "wergeld."

## TITLE LV. CONCERNING THE PLUNDERING OF CORPSES

2. "If anyone shall have dug up and plundered a corpse already buried, and it shall have been proved on him, he shall be outlawed until the day when he comes to an agreement with the relatives of the dead man, and they ask for him that he be allowed to come among men. And whoever, before he come to an arrangement with the relative, shall give him bread or shelter-even if they are his relations or his own wife-shall be sentenced to 600 denars which make 15 shillings."

3. "But he who is proved to have committed the crime shall be sentenced to 8000 denars, which make 200 shillings."

## TITLE LVI. CONCERNING HIM WHO SHALL HAVE SCORNED TO COME TO COURT

1. "If any man shall have scorned to come to court, and shall have put off fulfilling the injunction of the bailiffs, and shall not have been willing to consent to undergo the fine, or the kettle ordeal, or anything prescribed by law: then he (the plaintiff) shall summon him to the presence of the king. And there shall be 12 witnesses who-3 at a time being sworn-shall testify that they were present when the bailiff enjoined him (the accused) either to go to the kettle ordeal, or to agree concerning the fine: and that he had scorned the injunction. Then 3 others shall swear that they were there on the day when the bailiffs enjoined that he should free himself by the kettle ordeal or by composition; and that 40 days after that, in the "mallberg," he (the accuser) had again waited until after sunset, and that he (the accused) would not obey the law. Then he (the accuser) shall summon him before the king for a fortnight thence; and three witnesses shall swear that they were there when he summoned him and when he waited for sunset. If he does not then come, those 9, being sworn, shall give testimony as we have above explained. On that day likewise, if he do not come, he (the accuser) shall let the sun go down on him, and shall have 3 witnesses who shall be there when he waits till sunset. But if the accuser shall have fulfilled all this and the accuser shall not have been willing to come to any court, then the king, before whom he has been summoned, shall withdraw his protection from him. Then he shall be guilty, and all his goods shall belong to the fisc, or to him to whom the fisc may wish to give them. And whoever shall have fed or housed him-even if it were his own wife-shall be sentenced to 600 denars, which make 15 shillings; until he (the debtor) shall have made good all that has been laid to his charge."

## TITLE LVII. CONCERNING THE "CHRENECRUDA"

1. "If anyone have killed a man, and, having given up all his property, has not enough to comply with the full terms of the law, he shall present 12 sworn witnesses to the effect that, neither above nor under it, has he any more property than he has already given. And he shall afterwards go into his house, and shall collect in his hand dust from the four corners of it, and shall afterwards stand upon the threshold, looking inwards into the house. And then, with his left hand, he shall throw over his shoulder some of that dust on the nearest relative that he has. But if his father and (his father's) brothers have already paid, he shall then throw that dust on their (the brother's) children-that is, over three (relatives) who are nearest on the father's and three on the mother's side. And after that, in his shirt, without girdle and without shoes, a staff in his hand, he shall spring over the hedge. And then those three shall pay half of what is lacking of the compounding money or the legal fine; that is, those others who are descended in the paternal line shall do this."

2. "But if there be one of those relatives who has not enough to pay his whole indebtedness, he, the poorer one, shall in turn throw the "chrenecruda" on him of them who has the most, so that he shall pay the whole fine."

3. "But if he also have not enough to pay the whole, then he who has charge of the murderer shall bring him before the "Thing," and afterwards to 4 Things, in order that they (his friends) may take him under their protection. And if no one have taken him under his protection-that is, so as to redeem him for what he can not pay-then he shall have to atone with his life."

TITLE LVI. CONCERNING HIM WHO SHALL SAY

SECTION 1. THAT HE OWES

1. "If any man shall have agreed to come to court, and shall have
[illegible] all FULFILLING the INJUNCTION of the JUDICIARY, and shall not have
[illegible] vailing to COMPARE by the [illegible], or the DEATH ordeal, or
[illegible] PRESCRIBED by LAW [illegible] the PLAINTIFF] shall ANSWER him to
the PRESENCE of the KING. And there shall be [illegible] WITNESSES who-d at a
[illegible] SHALL testify that they were present when the DEFEND-
ant [illegible] either to go to the battle ordeal, or to
[illegible] the FINE and that he had AGREED the [illegible]. Then
3 others shall swear that they were there on the day when the DEFEND-
ant [illegible] that he should FREE himself by the BATTLE ordeal or by COMPOSI-
tion and that at [illegible] in the "MILLSTAFF," he (the ACCUSED) had
agreed until after MIDNIGHT, and that he (the ACCUSED) would not obey
the [illegible]. Then he (the ACCUSER) shall RENOUNCE his FAITH for a
[illegible] THOUSAND and THREE HUNDRED shall swear that they were there
when he RENOUNCED his and who he WITNESS for HIMSELF. If he have not the
[illegible], then 3, FALSE SWORN, shall give TESTIMONY as we have above de-
clared. Or that day [illegible], if he be not ready, he (the ACCUSER) shall
[illegible] the man go [illegible], and shall have 3 WITNESSES who shall be there
[illegible] until after MIDNIGHT, and that he (the ACCUSED) would not obey
the [illegible]. Then he (the ACCUSER) shall [illegible] all
[illegible] and the ACCUSED shall not have [illegible] to [illegible] court,
[illegible] the KING, before whom he has been ACCUSED, shall [illegible] him FRO-
[illegible] from [illegible]. Then he shall be GUILTY, and all his GOODS shall be-
[illegible] to the [illegible], or to him to whom the KING may wish to give them. And
[illegible] shall have [illegible] or [illegible] his ARMS or his WITNESS shall
be [illegible] by OLD [illegible], while HE [illegible] until [illegible] (the ACCUSED)
shall have made good all that has been LAID to his charge."

TITLE LVII. CONCERNING THE "MISTRETHTAN"

1. "If anyone have killed a man, and, having given up all his pro-
perty, has not enough to satisfy with the full [illegible] of the law, he shall
present [illegible] to the effect that, neither more nor [illegible],
has he any more property than he already have. And he shall after-
wards go into his house, and shall collect [illegible] and [illegible] from the four
corners of it, and shall afterwards stand upon the threshold, looking to-
wards the house. And then, with his left hand, he shall throw over
his shoulder one of [illegible] articles [illegible] in, so that
[illegible] who are nearest on the father's and three on the mother's side,
(relatives) shall [illegible] [illegible] and three on the mother's side.
And after that, in his shirt, without girdle and without shoes, a staff
in his hand, he shall spring over the [illegible]. And then these three shall
[illegible] of what is lacking of the compensation, ought or the legal fixed
[illegible], those others who are descended in the paternal line shall do
this."

2. "But if there be one of those relatives who has not enough to
pay his whole [illegible], he, the nearer one, shall [illegible] turn [illegible]
"compensation" on him of them who are the next, so that he shall pay the
whole [illegible]."

3. "But if there be none [illegible] enough to pay the same, then he who
has charge of the murderer as it [illegible] the [illegible] and after-
wards to [illegible]. In order that they [illegible] may take [illegible]
their protection. And if no one [illegible] him under [illegible] protection,
[illegible], so as to redeem his [illegible] for that [illegible] he shall have to
atone with his life."

## TITLE LIX. CONCERNING PRIVATE PROPERTY

1. "If any man die and leave no sons, if the father and mother survive, they shall inherit."

2. "If the father and mother do not survive, and he leave brothers or sisters, they shall inherit."

3. "But if there are none, the sisters of the father shall inherit."

4. "But if there are no sisters of the father, the sisters of the mother shall claim that inheritance."

5. "If there are none of these, the nearest relatives on the father's side shall succeed to that inheritance."

6. "But of Salic land no portion of the inheritance shall come to a woman: but the whole inheritance of the land shall come to the male sex."

## TITLE LXII. CONCERNING WERGELD

1. "If anyone's father have been killed, the sons shall have half the compounding money (wergeld): and the other half the nearest relatives, as well on the mother's as on the father's side, shall divide among themselves."

2. "But if there are no relatives, paternal or maternal, that portion shall go to the fisc."

# THE

# VISIGOTHIC CODE

# LAWS OF THE JUDGES.

## BOOK I.

## CONCERNING LEGAL AGENCIES.

### TITLE I. THE LAWMAKER.

I. What the Method of Making Laws Should Be.

"We, whose duty it is to afford suitable assistance in the formation of the laws, should, in the execution of this undertaking, improve upon the methods of the ancients, disclosing as well the excellence of the law to be framed, as the skill of its artificer. The proof of this art will be the more plainly evident, if it seems to draw its conclusions not from inference and imitation but from truth. Nor should it stamp the force of argument with the subtlety of syllogism, but it should, with moderation, and by the use of pure and honorable precepts, determine the provisions of the law. And, indeed, reason plainly demands that the work be performed in this manner. For, when the master holds in his hand the finished product, in vain is sought the reason for its having been impressed with that particular form. On subjects that are obscure, reason eagerly seeks to be informed by examination; in matters, however, that are well known and established action alone is required. Therefore, when the matter in question is not clear because its form is unfamiliar, investigation is desirable; but it is otherwise in affairs known to all men, where not speculation, but performance, becomes essential. As we are more concerned with morals than with eloquence, it is not our province to introduce the personality of the orator, but to define the rights of the governor."

VII. How the Lawmaker Should Act in Rendering Judgment.

"The Judge should be quick of preception; firm of purpose; clear in judgment; lenient in the infliction of penalties; assiduous in the practice of mercy; expeditious in the vindication of the innocent; clement in his treatment of criminals; careful of the rights of the stranger; gentle toward his countrymen. He should be no respecter of persons, and should avoid all appearance of partiality."

VIII. How the Lawmaker Should Comport Himself in Private and Public Affairs.

"All public matters he should approach with patriotism and reverence; those concerning private individuals and domestic controversies he should determine according to his authority and power; so that the community may look up to him as a father, and the lower orders of the people may regard him as a master and a lord."

"He should be assiduous in the performance of his duties so that he may be feared by the commonalty to such a degree that none shall hesitate to obey him; and be so just that all would willingly sacrifice their lives in his service, from their attachment to his person and to his office,"

TITLE II. THE LAW.

II. What the Law is.

"The law is the rival of divinity; the oracle of religion; the source of instructions; the artificer of right; the guardian and promoter of good morals; the rudder of the state; the messenger of justice; the mistress of life; the soul of the body politic."

III. What the Law Does.

"The law rules every order of the state, and every condition of man; it governs wives and husbands; youth and age; the learned and the ignorant; the polished and the rude. It aims to provide the highest degree of safety for both prince and people, and, in renown and excellence, it is as conspicuous as the noon-day sun."

V. Why the Law is Made.

"Laws are made for these reasons: that human wickedness may be restrained through fear of their execution; that the lives of innocent men may be safe among criminals; and that the temptation to commit wrong may be restrained by the fear of punishment."

BOOK II.

CONCERNING THE CONDUCT OF CAUSES.

TITLE I. CONCERNING JUDGES AND MATTERS TO BE DECIDED IN COURT.

FLAVIUS RECESVINTUS, KING.

III. It is Permitted to No One to be Ignorant of the Law.

"All true science declares that ignorance should be detested. For while it has been written, "he need not understand who desires to act with propriety," it is certain that he who does not wish to know, despises an upright life. Therefore, let no one think that he can do what is unlawful because he was ignorant of the provisions of the laws, and what is sanctioned by them; for ignorance does not render him innocent, whom guilt has subjected to the penalties of the criminal."

TITLE III. CONCERNING COMMISSIONERS AND COMMISSIONS.

ANCIENT LAW.

VI. It shall not be Lawful for a Woman to Act as an Attorney, but She may Conduct Her Own Case in Court.

"No woman can conduct a case under the authority of another, but she is not forbidden to transact her own business in court. Nor can a husband conduct the case of his wife without authority from her; and, indeed, he should protect himself with such an instrument in writing, that the wife may not repudiate the whole proceeding; and if she should repudiate it, the husband shall undergo the penalty to which he is liable who presumed to conduct a case without the authority of his wife. And if the husband should lose a case which he prosecuted without the order

of his wife, her rights shall in no way be prejudiced; and she can afterwards either prosecute the case herself, or can authorize anyone she wishes to do whatever is proper in the matter. And if the case should justly go against the husband, and the wife should believe that the adversary who prevailed should again be sued; and, after the second trial, it should be apparent that her husband was not unjustly beaten in the first trial, the wife shall render satisfaction as prescribed by law, not only to the judge who first heard the case, but also to the other party whom she brought into court for the second time."

## TITLE IV. CONCERNING WITNESSES AND EVIDENCE.

### FLAVIUS CHINTASVINTUS, KING.

I. Concerning Persons who are not Permitted to Testify.

"Murderers, malefactors, thieves, criminals, poisoners, ravishers, perjurors, or those who are addicted to the practice of sorcery of divination, shall under no circumstances be permitted to testify."

### FLAVIUS CHINTASVINUS, KING.

XI. At what Age Minors can Testify.

"It is hereby decreed that after a boy or girl has reached his or her fourteenth year, they shall be competent to testify in any case in court."

XII. A Near Relative, or a Kinsman of a Party to a Suit, cannot give Testimony against a Stranger.

"Brothers, sisters, half-brothers, uncles, aunts, or their children, also grandsons and granddaughters, shall not be permitted to give evidence in court against strangers; unless relations belonging to the same family should have lawsuits among themselves, or there should not be any other freeman who can testify in the case."

## TITLE V. CONCERNING VALID AND INVALID DOCUMENTS; AND HOW WILLS SHOULD BE DRAWN UP.

### ANCIENT LAW.

IV. Neither Children, nor Other Heirs, shall contest the Final Disposition of Property by their Ancestors.

"It shall not be lawful for a son, or other heir, to contest the just and legitimate provisions of the will of an ancestor, because it is presumption in him who attempts to nullify the acts of his ancestors."

### FLAVIUS RECESVINTUS, KING.

X. What Contracts entered into by Minors shall be Valid.

"Minors under fourteen years of age who wish to dispose of their property by will, or in any other manner, whether in writing, or in the presence of witnesses, shall not be permitted to do so, unless in case of serious illness, or impending death. But if they should be impelled by necessity, as aforesaid all minors who are more than ten years of age, have full liberty to make such disposition of their property as they may desire. If, however, they should recover from their illness, whatever

they have done shall be void; unless, being ill a second time, they should confirm what they have previously done; or, having reached their fourteenth year, they should have full authority to act for themselves in all matters in which they are interested. All persons who are insane from infancy, or indeed from any age whatever, and remain so without intermission, cannot testify, or enter into a contract, and, if they should do so, it would have no validity. But such as have lucid intervals, shall not be prohibited from transacting business during these periods."

## BOOK III.

## CONCERNING MARRIAGE.

### TITLE I. CONCERNING NUPTIAL CONTRACTS.

THE GLORIOUS FLAVIUS RECESVINTUS, KING.

I. Marriage shall not be Entered Into without a Dowry.

"Marriage is recognized to have greater dignity and honor, where the dowry is given before the nuptial contract has been entered into in writing. For where the dowry has been neither given, nor stated in writing, what expectation can there be of future conjugal dignity, when propriety does not confirm the celebration of the marriage, nor the honorable obligation of the written contract accompany it?"

FLAVIUS RECESVINTUS, KING.

II. It shall be as Lawful for a Roman Woman to Marry a Goth, as for a Gothic Woman to Marry a Roman.

"The zealous care of the prince is recognized, when, for the sake of future utility, the benefit of the people is provided for; and it should be a source of no little congratulation, if the ancient law, which sought improperly to prevent the marriage of persons equal in dignity and lineage, should be abrogated. For this reason, we hereby sanction a better law; and, declaring the ancient one to be void, we decree that if any Goth wishes to marry a Roman woman, or any Roman a Gothic woman, permission being first requested, they shall be permitted to marry. And any freeman shall have the right to marry any freewoman; permission of the Council and of her family having been previously obtained."

III. Where a Girl Marries against the Will of her Father, while she is Betrothed to Another.

"Where anyone is betrothed to a girl, either by the consent of her father, or of any near relative in whom authority in these matters is vested by all, and the girl, in defiance of the wishes of her father, desires to marry another than him to whom she has been betrothed; this we decree shall under no circumstances be permitted. But if the girl, against the will of her father, should have fled to him who was her choice, and should have married him, both shall be delivered into the power of him to whom, with her father's consent, she has previously been betrothed. And if her mother, or brothers, or other relatives, should grant her wishes, and give her to him whom she has chosen, against the will of her father, those who have plotted this shall pay a pound of gold to whomever the king may direct. Nor shall the act of the parties be valid, but both of them, as has hereinbefore been stated, shall be delivered up, with all their property, to him to whom the girl had already been betrothed. And we decree that this law shall be observed

BOOK III.

CONCERNING MARRIAGE.

TITLE I. CONCERNING NUPTIAL CONTRACTS.

THE CODEX FLAVIUS RECENTIUS, KING.

1. Marriage shall not be entered into without a treaty.

Marriage is recognized to have greater dignity and honor, where the treaty is given before the nuptial consecration has been entered into in writing. For where the treaty has been neither given, nor stated in writing, what expectation can there be of future conjugal dignity, when perhaps only consideration of the marriage, for the honorable obligation of the written contract accompany it?

THE EDICT OF KING RECCESVINTUS, KING.

II. It shall be as lawful for a woman Queen to marry a Count, as for a Noble Woman to marry a Baron.

The analogy case of the prince is recognized, when, for the sake of future utility, the faculty of the people is provided for and it should be a source of no little consternation, if the contract [illegible] should be a source of injury to the people. Moreover, it is the contract [illegible] injuriously to prevent the marriage of persons equal in dignity and illness, should so circumstance. For this reason, we hereby sanction a better law and, legislating the nuptial one to be void, we decree that if any Goth wishes to marry a Roman woman, or any Roman a Gothic woman, marriage being first requested, they shall be permitted to marry. And any freeman shall have the right to marry any freewoman portion of the Council and of her family having previously obtained."

III. Where a Girl marries against the Will of her Father, while she is Betrothed to Another.

"Where anyone is betrothed to a girl, either by the consent of her father, or of any near relative in whose authority in these matters is vested by all, and the girl, in defiance of the will of her father, hastens to marry another than him to whom she has been betrothed; this decree shall under no circumstances be permitted. But if the girl, against the will of her father, should have fled to him who was her choice, and should have married him, both shall be subjected into the power of him to whom, with her father's consent, she has previously been betrothed. And if her mother, or brothers, or other relative, should first be asked, and give her to him whom she has chosen, against the will of her father, these we have plotted this shall lay a record of void in whatever the kind may be. For what the act of the parties be void, for lots of time, as has heretofore been stated, shall be delivered up, with all their property, to him to whom the girl had already been betrothed. And no longer that time lay shall be observed

where the father shall have made arrangements concerning the marriage of his daughter, and the amount of the dowry has been agreed upon, and her father dies before the marriage has been concluded; in such a case the girl shall be given to him to whom she had been contracted by either her father or her mother."

FLAVIUS CHINTASVINTUS, KING.

IV. Where a Gift is made by way of Pledge, a Nuptial Contract cannot be Rescinded.

"Since we have treated of things that are past, we consider it eminently proper to discuss and determine those that are to come. For the reason that there are many who, disregarding the betrothal, fail to complete the nuptial contract; we deem it proper to abolish this abuse, that no one may delay a marriage according to his will. Therefore, we decree, from this day, that when the ceremony of betrothal has been performed, either between the parents of relatives of the parties, or in the presence of witnesses, and the ring shall have been given or accepted as a pledge, although nothing may have been committed to writing, the promise shall, under no circumstances, be broken. Nor shall it be lawful for either party to change his or her mind, if the other is unwilling to consent; but if all the provisions relating to the dowry have been carried out according to law, then the marriage shall be celebrated."

FLAVIUS RECESVINTUS, KING.

V. Women Advanced in Years shall not Marry Young Men.

"The law of nature is framed in the direct hope of progency when the nuptial contract is entered into with all due solemnity. For a marriage takes place between persons who are incompetent, either through age or some personal defect, to properly perform their marital duties, how can their offspring be other than dwarfed or deformed? For that cannot be perfect whose origin is defective. We sometimes see persons who, not observing the laws of nature, but induced by avarice, dispose of their children in marriage so improperly, that neither the age, rank, or morals of the parties concerned, are considered by them. For though men have received their name from the fact that they control women by their superior strength; some, in violation of the laws of nature, give the priority to women, when they united females of advanced age with boys who are little more than children; and thus, for the sake of gain, and through unwise delay, encourage the commission of vice by the former. Therefore, that an end may be put to practices whose results are unfavorable to future generations, we now decree, that, hereafter, women shall always marry men who are older than themselves, and a marriage under other circumstances shall not be valid, if either of the parties should object. A space of time, not longer than two years, shall be permitted to elapse from the day of betrothal to the day of marriage; unless a longer period shall be agreed upon by the parents or relations, or by the parties themselves, if they are of age. But if, after the contract has been made, it is determined by common consent to defer the date of the nuptials; or if one of the persons should fail to be present, through necessity, this may be done; but the marriage shall not then be deferred longer than two years more. And if a second time, or several times, it may be desirable to prolong the interval, it shall only be for a period of two years; otherwise, the marriage contract, though made in writing, and accompanied with the delivery of the dowry, shall not be valid. If any one unnecessarily or arbitrarily should protract the time, and violate the marriage contract, he shall be liable to the penalty which is contained in it, and the contract shall still remain in force. Any woman who has had one or more husbands, shall after the death of those husbands, be permitted to marry any man of proper age who has never been married before, or who has had one or more wives already deceased."

where the father shall have made arrangements concerning the marriage of his daughter, and the amount of the dowry has been agreed upon, and for letter than before the marriage has been concluded: in such a case the said shall be given to him to whom she had been contracted by either her father or her mother."

PLAYING CHILDISHLY'S KIND.

IV. Where a Gift is made by way of Pledge, a Dispute cannot be Decided.

"Since we have treated of things that are past, we consider it usually proper to discuss and determine those that are to come. For the reason that there are many who, misconceive the sentence, fail to observe the nuptial contract as they ought to, we shall by edict, that no one may delay a marriage according to his will. Therefore, we decree, from this day, that when the ceremony of betrothal has been performed, either between the parents of relatives of the parties, or in the presence of witnesses, and the ring shall have been given or accepted as a pledge, although nothing may have been committed to writing, the female shall, under no circumstances, in broken. For shall it be lawful for either party to change his or her mind. If the either is willing to contract but if all the previous relating to the forty five days carried out according to law, then the marriage shall be celebrated."

PLAYING BACKWARDS, KIND.

V. Women Advanced in Years shall not Marry Young Men.

"The law of nature is framed in the direct help of procreation the nuptial contract is united late with all the solemnity. For a marriage take place between persons who are incompetent, either through age or some personal defect, to reproduce their mutual kind, for one their offspring to other than married or deformed. For that cannot be perfect those origin is defective. We sometimes see persons who, not observing the laws of nature, but induced by avarice, dispose of their children in marriage as improperly, that neither the wife, man, or servile or the parties concerned, are contented by them. For though one have received their from the that they control upon by their superior strength once, in violation of the laws of nature, give the priority to more than children; and that, for the sake of it, [illegible] delay, accompany the mutilation of vile by the former. Therefore, that no one may be put to expense these results by unforeseen to future generations, by any [illegible], some shall always [illegible] ex no one elder than themselves, and [illegible] under other circumstances shall not be valid, if either of the parties should object. A space of time, not longer than two years, shall be granted to either from the day of betrothal to the day of contract unless a longer period shall be agreed upon by the parties or relations, or if the parties themselves, if they are of age. But if, either the contract has been made, it is determined by cannot contract to defer the date of the nuptials or if one of the parties should fail to be present, through necessity, this may be done; but the marriage shall not then be deferred longer than two years. And if a second time, or several times, it may be lawful to prolong the [illegible], it shall only be for a period of two years succeeding the expiration, though made in writing, and accompanied with the [illegible] of the party, shall not be valid. If any one unconstitutionally or [illegible] should prevent the time, and violate the aforesaid contract, he shall be liable to the penalty which is contained in it, and the contract shall still remain in force. Any person who has had one or more [illegible], shall after the death of them husbands, be permitted to marry any man of proper age who has not [illegible] before, or who has had one or more children already deceased."

FLAVIUS CHINTASVINTUS, KING.

VI. What Property the Dowry shall consist of.

"As disputes concerning the dowry often arise between parties contemplating marriage, it is a matter of common advantage that no doubt should hereafter be possible under this our law. Therefore, we decree and declare, that the following law shall be perpetually observed hereafter, to wit: that if anyone of the nobles of our palace, or of the principal personages of the Gothic nation, should demand in marriage for his son either the daughter of another, or the widow of anyone; or if anyone should choose for himself a wife, of the aforesaid rank: no person shall pay, or bind himself to pay, as the dowry of the girl or woman, more than the tenth part of his property. But if it should happen that a parent should wish to give the dowry for the benefit of his daughter-in-law, he can then give as said dowry, the tenth part of the property which his son would inherit from him in case of his death; and, in addition, he must give ten young men and ten young girls, and twenty horses; or, in ornaments, as much as would amount in value to a thousand solidi. And the wife shall have absolute liberty to dispose of this property if she should not leave any sons; and if she should die intestate, this donation shall go to the nearest heirs of the husband."

"It shall not be lawful for the parents of the girl, or for the girl herself, or for any woman, to ask more as a dowry from the bridegroom, than is provided for by this law; and, as was permitted to the Roman laws, the girl, or the woman, may give to the bridegroom as much out of her own property as she herself has demanded of him, should she desire to do so. If the bridegroom should promise in writing, or bind himself by oath, at the time of the marriage, to give a larger sum than is permitted by this law, he is hereby fully authorized to take possession of all over and above said sum, whenever he chooses. But if it should happen that, through reverence for his oath, or, as often is the case, through negligence, he should be unwilling to revoke or appropriate the surplus amount which he had given to his bride, or should refuse to do so; as it is not proper that, through the carelessness of one, injury should be inflicted upon the many; therefore, when the parents of the bridegroom, or his relations, shall become aware of the facts, they may deprive the bride of all over and above the sum above mentioned as legal and this they may do as a matter of right, and without prejudice. If, however, the husband, when a year has passed since the marriage, should wish, through affection for his wife, to make her a present of any kind, he shall have full liberty to do so. But not within the space of a year shall the husband give to the wife, or the wife to the husband, any present whatever, except the dowry hereinbefore mentioned; unless either of them should be attached by grievous illness, and be in imminent danger of death."

"In regard to others who desire to make marriage contracts, we deem it proper, and so decree; that whoever is known to possess ten thousand solidi, shall give to his bride as a dowry, as much as a thousand solidi out of all his possessions. And he who has only a thousand solidi shall, in the same proportion, give a hundred as a dowry.

"This law relating to the dowry shall be observed, without controversy, in all matters great and small. Given and confirmed on the second day of the Ides of January, and the third year of our reign."

ANCIENT LAW.

VII. The Father shall Exact and Keep the Dowry of his Daughter.

- PLATO'S CHIEFTAIN MOTHS, KING.

VI. What property the Dowry shall consist of.

"As disputes concerning the dowry often arise between parties contracting marriage, it is a matter of common advantage that no dowry should hereafter be possible under this our law. Therefore, we decree and legislate, that the following law shall be perpetually observed hereafter, to wit: that if anyone of the nobles of our palace, or of the principal parentages of the Servile nations, should demand in marriage for his son either the daughter of another, or the widow of anyone, or if anyone should choose for himself a wife, of the aforesaid ranks or person shall pay, or find himself to pay, as the dowry of his wife or women, more than the tenth part of his property. But if it should happen that a parent should wish to give the dowry for the benefit of his daughter-in-law, he can then give an equal dowry, the tenth part of the property which his son would inherit from his in case of his death and, in addition, he must give ten young men and ten young girls, and twenty horses; in ornaments, as much as would amount in value to a thousand solidi. And the wife shall have absolute liberty to dispose of this property if she should not leave any sons; and if she should die intestate, this donation shall go to the nearest heirs of the husband."

VII. The Father shall Emancipate and Keep the Dowry of his Daughter.

"It shall not be lawful for the parents of the girl, or for the girl herself, or for any woman, to ask more as a dowry from the bridegroom, than is provided for by this law; as was permitted to the Roman laws, the girl, or the woman, may give to the bridegroom as much out of her own property as she herself has promised of him, should she desire to do so. If the bridegroom should promise in writing, or bind himself by oath, at the time of the marriage, to give a larger sum than is permitted by this law, he is hereby fully authorized to take possession of all over and above said sum, whenever he chooses. But if it should happen that, through reverence for his oath, or, as often is the case, through negligence, he should be unwilling to revoke or abrogate the surplus amount which he had given to his bride, or should refuse to do so; it is not proper that, through the carelessness of one, luxury should be initiated upon the next; therefore, when the parents of the bridegroom, or his relations, shall become aware of the fact, they may deprive the bride of all over and above the sum above mentioned as lawful and this they may do as a matter of right, and without question. It, however, the husband, when a year has passed since the marriage, should wish, through affection for his wife, to make for a present of any kind, he shall have full liberty to do so. But not within the space of a year shall the husband give to the wife, or the wife to the husband, any present whatever, except the dowry hereinbefore mentioned; unless either of them should be attended by grievous illness, and be in imminent danger of death."

"It remains to obtain who desire to make marriage contracts, as soon as proper, and to decree that whoever is known to possess ten thousand solidi, shall give to his bride as a dowry, as much as a thousand solidi out of all his possessions. And he who has only a thousand solidi shall, in the same proportion, give a hundred as a dowry."

"While law relating to the dowry shall be observed, without controversy, in all matters great and small. Given and confirmed on the second day of the Ides of January, and the third year of our reign."

AGRIKAT IAE.

"The father shall have the right to demand and keep the dowry of his daughter. If the father or mother should not be present, then the brothers, or the nearest relatives, shall receive the dowry, and deliver it untouched to their sister."

ANCIENT LAW.

VIII. In case of the Death of the Father, the Disposition of the Children, of Both Sexes, in Marriage, shall belong to the Mother.

"If the father should be dead, the right to dispose of the children of both sexes in marriage shall belong to the mother. If the mother also should be dead, or if she should have married a second time, the brothers shall have the right to select the husbands or wives for the other children. But if any of the brothers should not be of age, which is indispensable when their brother or sister is to be disposed of in marriage; then the paternal uncles shall have that authority. Where a brother is of full age, and declines the advice of his relatives, he shall have the power to marry without their consent. But if a suitor, equal to a sister in rank, should seek her in marriage; then her uncle or her brother should consult with the other relatives as to whether said suitor shall be accepted, or rejected, by common consent."

IX. Where Brothers Defer the Marriage of their Sister, or Where a Girl Marries Beneath her Station.

"If the brothers of the girl should put off her marriage, with the expectation that she, taking refuge with her intended husband, may lose what she would have inherited from her father according to law; and they should repulse her suitor two or three times; the girl, as soon as the deceit of her brothers becomes evident, should she deem that her suitor is her equal in birth, shall then receive from her brothers whatever property she is entitled to inherit from her parents. But if, on the other hand, her brothers should do nothing to affect the rights of their sister, but only cause delay in order to provide her with a husband more worthy of her; and she, forgetful of her modesty, and disregarding her rank, should marry a man inferior to her in station; she shall lose what she would have inherited from her parents, whether that inheritance has been divided or not, but she shall still have the right to inherit from her brothers and her sisters, and from any other relatives."

FLAVIUS CHINTASVINTUS, KING.

X. Where the Items of a Dowry, relating to any kind of Property, are reduced to Writing, it shall not be Contested.

"When anyone is desirous of contracting marriage, either in his own behalf, or in behalf of his son, or of any other relative; he shall have a right to dispose of, as a dowry, any of his own property; or any given him by the king; or any he has acquired legally, in any way whatsoever. And whatever has lawfully been stated in writing to be a dowry, by any person, shall be valid, as such, in every respect."

TITLE II. CONCERNING UNLAWFUL MARRIAGES.

ANCIENT LAW.

I. Where a Woman Marries within a Year after the Death of her Husband.

"If any woman, within a year after the death of her husband, should marry another, or commit adultery, the children by her first marriage shall receive half of her property; or, if there are no children, the nearest heirs of the deceased husband shall receive half of her property, by order of the court. We have especially prescribed this penalty lest the woman,

"The father shall have the right to locate and keep the lovey of his daughter. If the father or mother should not be present, then the brother, or the nearest relative, shall receive the lovey, and deliver it unaccepted to their sister."

AMBIENT LAW.

VIII. In case of the death of the Father, the Disposition of the Children, of Both Sexes, in Marriage, shall belong to the Mother.

"If the father should be dead, the right to dispose of the children of both sexes in marriage shall belong to the mother. If the mother also should be dead, or if she should have married a second time, the brothers shall have the right to select the husbands or wives for the other children. But if any of the brothers should not be of age, which is indispensable when their brother or sister is to be disposed of in marriage then the paternal uncles shall have that authority. Where a brother is of full age, and realizes the estate of his relatives, he shall have the power to marry without their consent. But if a minor, equal to a sister in rank, should seek her in marriage, then her uncle or her brother should consult with the other relatives as to whether said minor shall be accepted, or rejected, by common consent."

IX. Where Brothers Defer the Marriage of their Sister, or Where a Girl Marries Against Her Inclination.

"If the brothers of the girl should put off her marriage, with the expectation that she, taking refuge with her intended husband, may lose what she would have inherited from her father according to law; and they should repulse her suitor two or three times; the girl, as soon as the deeds of her brothers become evident, should she demand her suitor in her equal in birth, shall then receive from her brothers whatever property she is entitled to inherit from her parents. But if, on the other hand, her brothers should do nothing to affect the rights of their sister, but only cause delay in order to provide her with a husband more worthy of heart and she, forgetful of her modesty, and disregarding her rank, should marry a man inferior to her in station; she shall lose what she would have inherited from her parents, whether that inheritance has been divided or not, for she shall still have the right to inherit from her brothers and her sisters, and from any other relatives."

FLAVIUS CHRYSALLIUS, KING.

X. Where the items of a lovey, relating to any kind of property, are reduced to writing, it shall not be contested.

"When anyone in desiring or contracting marriage, either in his own behalf, or in behalf of his son, or of any other relative; he shall have a right to dispose of, as a lovey, any of his own property or any given him by the right of any he has acquired lawfully, in any way whatever. But whatever has lawfully been stated in writing to be a lovey, ..... person, shall be valid, as such, in every respect."

TITLE IV. CONCERNING UNNATURAL MARRIAGES.

AMBIENT LAW.

I. Where a Woman Marries within a Year after the Death of her Husband.

"If any woman, within a year after the death of her husband, should marry another, or commit adultery, the children by her first marriage shall receive half of her property; or, if there are no children, the nearest heirs of the deceased husband shall receive half of her property, by order of the court. We have especially provided this penalty lest the woman

having been left pregnant by her husband, and desiring to enter into a second marriage, should destroy her unborn offspring. We decree, however, that those only shall be exempt from the operation of this law, who marry within the prohibited time under order of the king."

II. Where a Freeborn Woman Marries a Slave, or her own Freedman.

"If a freeborn woman should commit adultery with her own slave, or freedman, or should marry him; as soon as this has been proved, she shall be put to death; and both adulterer and adulteress shall be publicly scouraged before the judge, and burned. And whenever any judge shall be convinced of the commission of such a crime, and shall learn that any mistress has married her slave, or her freedman; he shall at once cause them to be separated, in order that the sons of her former husband, or those of his relatives entitled to it by legal succession, may obtain possession of her property. But if heirs, to the third degree, should be wanting, then all her property shall belong to the royal treasury; for it is not proper that the children born of such a marriage should be heirs. And the woman, whether she be a virgin or a widow, shall be liable to the penalty hereinbefore mentioned. But if she should take refuge at the altar, and claim the privilege of sanctuary, she shall be given by the king to whomever he chooses, to serve him forever as a slave."

III. Where a Freeborn Woman Marries the Slave of Another, or a Freeborn Man the Female Slave of Another.

"If any freeborn woman should marry, or commit adultery with the slave of another, even though he should belong to the king; as soon as this shall come to the knowledge of the judge, he shall order the parties to be separated immediately, that they may suffer the punishment they deserve, to wit: each one a hundred lashes. And if, after this, they should commit the offence a second time, the judge shall order them to be arrested and brought before him, and they shall each receive another hundred lashes. And if they should be guilty for the third time, they shall receive another hundred lashes, and the woman shall be delivered over into the power of her relatives. And if, at any time afterwards, her relatives should permit her to return to the slave, she shall become the slave of the master to whom the latter belongs. And whatever children shall be born of this union shall follow the condition of the father, and remain in slavery. The relatives of the woman, however, shall inherit her property, according to the rules of inheritance. But if the children who are born of this union shall prove, by a lawful witness, that for thirty years they have been free, they shall be exempt from servitude; provided that their parents, within the thirty years for which time the children have proved themselves to be free, should have rendered no service to their master, by reason of which their children might be subject to slavery. And we direct that this law shall also apply to freeborn men who marry the female slaves of the king, or those of anyone else whomsoever."

FLAVIUS CHINTASVINTUS, KING.

IV. Where a Freedwoman, or a Freedman, Marries the Slave of Another.

"If any woman who has been freed should unite herself with the slave of another, or should marry him; the master of the slave shall notify her three times, in the presence of three witnesses, to leave him, and if, after the third notification, she should be unwilling to do so, she shall become the slave of the master of him with whom she is living. But if she should not have been notified before any children are born, then she shall remain free. It is the rule that the blood relations of a slave shall belong to his master, because those cannot be free who are born in this condition. This law likewise shall apply to men who have been set free, who

"LAWFUL CHRISTIAN LIVING, KING."

II. Where a Freeman, or a Freedman, Marries the Slave of Another.

"If any woman who has been freed should unite herself with the slave of another, or should marry that the master of the slave shall notify her three times, in the presence of three witnesses, to leave him, and if, after the third notification, she should be unwilling to do so, she shall become the slave of the master of him with whom she is living. But if she should not have been notified before any children are born, then she shall remain free. It is the ruling that the blood relations of a slave shall become free. It is also ruled that a free woman who has had children by her master, freedom shall not be granted to her husband, and she shall remain free. While law likewise shall apply to any who have been set free,



having been left pregnant by her husband, and desiring to enter into a second marriage, should destroy her unborn offspring. Be decree, however, that there only shall be except from the operation of this law over within the prohibited time water order of the King."

II. Where a Freeborn Woman Marries a Slave, or her own Freedman.

"If a freeborn woman should commit adultery with her own slave, or freedman, or should marry that as seen be this has been proved, she shall be put to death and both adulterer and adulteress shall be publicly executed before the judge, and thereof. And whenever any judge shall be convicted of the commission of such a crime, and shall learn that any slave has married her slave, or her freedman; he shall at once cause them to be separated, in order that the case of her former husband, or those of his relatives entitled to it by legal succession, may obtain possession of her property. But if before, to the third degree, should be wanting, then all her property shall belong to the royal treasury; for it is not proper that the children born of such a marriage should be theirs. And the woman, whether she be a virgin or a widow, shall be given by the king to whomever he chooses, to serve his forever as a slave."

III. Where a Freeborn Woman Marries the Slave of Another, or a Freeborn Man the Female Slave of Another.

"If any freeborn woman should marry, or commit adultery with the slave of another, even though he should inform to the king as soon as this shall come to the knowledge of the judge, he shall order the parties to be separated immediately, that they may suffer the punishment they deserve, to wit: each one a hundred lashes. And, after this, they should commit the offence a second time, the judge shall order them to be arrested and ironed, before him, and they shall each receive another hundred lashes. And if they should be guilty for the third time, they shall receive another hundred lashes, and the woman shall be delivered over into the power of her relatives. And if, at any time afterwards, her relatives should permit her to return to the slave, he shall become the slave of the master to whom the latter belongs. And whatever children shall be born of this union shall follow the condition of the father, and remain in slavery. The relatives of the woman, however, shall inherit her property, according to the rules of inheritance. But if the children who are born of this union shall prove, by a lawful witness, that for thirty years they have been free, they shall be exempt from servitude; provided that their parents, within the thirty years for which the children have proved themselves to be free, should have received no service to their master, by reason of which their children might become slaves. And we direct that this law shall also apply to freeborn men who marry the female slaves of the king, or those of anyone else whomsoever."

unite with the slaves of others. But if any woman who has been set free should marry the slave of another, after the permission of the master has been granted, through any contract or agreement with the latter, then such contract shall be valid."

V. Where anyone gives in Marriage his Slave, of Either Sex, to the Slave of Another.

"Whoever gives his female slave, as a wife, to the slave of another, without the knowledge of the master of the latter, and this should be established by certain proof, the said master shall have the wife of the slave, along with all of her children, as his own slaves. And he who marries the female slave of another to his own slave, we ordain shall also be subject to this law."

VI. Where a Woman contracts a Second Marriage in the Absence of Her Husband.

"No woman, in the absence of her husband, shall have liberty to marry another man until she has learned, by certain evidence, that her husband is dead; and he, also, who wishes to marry her must make diligent inquiry for that purpose. But if they should neglect to do this, and should be unlawfully married, and afterwards the former husband should return, they shall both be delivered up into his power, to be disposed of at his will, and he shall have the right to sell them or do whatever he pleases with them."

FLAVIUS CHINTASVINTUS, KING.

VII. Where a Master Marries one of his Slaves to a Freewoman, declaring him to be a Freeman.

"The acts of wicked men must be resisted, lest unbridled depravity prevail. Many persons; induced by avarice, are accustomed to wickedly deceive freeborn women and girls by inducing them to accept their slaves as husbands, representing them to be freeborn; in order that any children they have, may afterwards be reduced to slavery. Therefore, that this fraud may be abolished, we decree by the present law, that persons guilty of such deception shall be branded with infamy; and those slaves who are found to have been represented as freemen by the aforesaid evil-minded persons, shall be, along with their children, forever free; just as if their masters had publicly liberated them; and the women or girls who married said slaves shall have, as their own, all the property which was either received by, or promised to, them at the time of their marriage; if they can establish by any suitable proof, that their husbands were given to them under the representation that they were free. But if any girl or woman, as aforesaid, or her parents, should not be able to prove this; the master shall possess said girl or woman, along with her children, as slaves, and shall be entitled to all their property. And this law shall also apply to those female servants who are known to have married freemen under similar circumstances of fraud, as well as to persons who have been set free, and who are proved to have married the slaves of others."

ANCIENT LAW.

VIII. Where a Freewoman Marries without the Consent of her Parents.

"If any freeborn girl should marry a freeman before the latter has consulted her parents, and if he then should obtain consent to have her as his wife, he shall pay the legal dowry to her parents; but if he can not furnish that sum, the girl shall be again placed under their control. If she should have been voluntarily married without the consent and knowledge of her parents, and they should then be unwilling to receive her, she shall

Andronicus publishing

not inherit along with her brothers, for the reason that she married without the permission of her parents. If her parents should give her any of their property, she shall have full liberty to dispose of it at her pleasure."

## TITLE III. CONCERNING THE RAPE OF VIRGINS, OR WIDOWS.

### ANCIENT LAW.

I. Where a Freeman carries off a Freewoman by Force, he shall not be permitted to Marry her, if she was a Virgin.

"If any freeman should carry off a virgin or widow by violence, and she should be rescued before she has lost her chastity, he who carried her off shall lose half of his property, which shall be given to her. But should such not be the case, and the crime should have been fully committed, under no circumstances shall a marriage contract be entered into with him; but he shall be surrendered, with all his possessions, to the injured party; and shall, in addition, receive two hundred lashes in public; and, after having been deprived of his liberty, he shall be delivered up to the parents of her whom he violated, or to the virgin or widow herself, to forever serve as a slave, to the end that there may be no possibility of a future marriage between them. And if it should be proved that she has received anything from the property of the ravisher, on account of her injury, she shall lose it, and it shall be given to her parents, by whose agency this matter should be prosecuted. But if a man who has legitimate children by a former wife should be convicted of this crime, he alone shall be given up into the power of her whom he carried off; and his children shall have the right to inherit his property."

### FLAVIUS RECESVINTUS, KING.

II. Where Parents remove their Daughter from the Power of a Ravisher.

"If the parents of the woman or girl who has been carried off should rescue her, the ravisher shall be given up to them, and, under no condition whatever, shall she be permitted to marry him; and should they presume to marry, both shall be put to death. If, however, they should take refuge with the bishop, or should claim the privilege of sanctuary, their lives shall be granted them; but they shall be separated and delivered over as slaves to the parents of the woman."

III. Where the Parents of a Girl, who has been Betrothed, consent that she should be Carried Away by Another.

"If parents should connive at their daughter being carried away, after she has been betrothed to another, they shall be compelled to pay the latter four times the amount of the dowry agreed upon; and the ravisher shall be delivered up as a slave, absolutely, under the law, to the man who was betrothed to the girl."

### ANCIENT LAW.

IV. Where Brothers, either during the Life of their Father, or after his Death, consent that anyone should Carry Away their Sister by Force.

"If, during the life of their father, any brothers should consent to, or connive at, the carrying off of their sister, they shall receive the penalty to which ravishers are liable, excepting that of death. But if, after the death of their father, they should give up their sister to a ravisher, or permit her to be carried off by him; for the reason that they have disposed of her in marriage to a person of vile character, or against

cus publishing company, Inc.

I. There a Freeman carries off a Freeman by force, he shall not be permitted to Marry her, if she was a Virgin.

"If any Freeman should carry off a virgin or widow by violence, and she should be removed before she has lost her dowerity, he can carry her off, shall have full of his property, which shall be given to her. But should such not be the case, and the crime should have been fully committed, no circumstances shall a marriage contract be entered into with that but he shall be prosecuted, with all his possessions, to the injured party and shall, in addition, receive the dowered leader in pyjamas, after having been deprived of his liberty, he shall be delivered up to the parents or for whom he violated, or to the virgin as wife herself, to forever serve as a slave, so the end that there may be no possibility of a future marriage between them. And if it should be proved that she has received anything from the property of the ravisher, on account of her injury, she shall lose it, and it shall be given to her parents, by whose agency this matter should be prosecuted. But if a man who has legitimate children by a former wife should be convicted of this crime, he alone shall be given up into the power [illegible] he can [illegible] off and his children shall have the right to inherit [illegible] property."

FLAVIUS XERXOVIUS, KING.

II. There Parents remove their Daughter from the Power of a Ravisher.

"If the parents of the young or girl who has been carried off should receive her, the ravisher shall be given up to them, and, under no condition whatever, shall he be permitted to marry him; and they should take refuge with, join shall be put to death. If, however, they should take refuge with the [illegible], or should claim the privileges of sanctuary, their lives shall be granted them; but they shall be separated and delivered over as slaves to the parents of the young."

III. Where Guardians of a Girl, who has been Betrothed, cohabit that she should be Carried Away by another.

"If parents should convive at their daughter being carried away, after she has been betrothed to another, they shall be compelled to pay the latter four times the amount of the dowry carried with the ravisher shall be delivered up as a slave, absolutely, under the law, to the one who betrothed to the girl."

ANCIENT LAW.

IV. Where Brothers, after having the life of their Father, or after his Death, consent that anyone should Carry Away their Sister by force.

"If, during the life of their father, any brothers should consent to, or connive at, the carrying off of their sister, they shall receive the penalty to which ravishers are liable, excepting that of death. But if, after the death of their father, they should give up their sister to a ravisher, or permit her to be carried off by him for the reason that they have disposed of her in marriage to a person of vile character, or against

her own will, when they should have protected her honor, they shall lose the half of their property, which shall be given to their sister, and, in addition, they shall each receive fifty lashes in public; so that others, admonished by this, may take warning. All accessories, who were present, shall receive the punishment prescribed by another law. And the ravisher, inexcusable by a former law, shall lose both his property and his rank."

ANCIENT LAW.

V. Where anyone Carries away by Violence a Woman who was Betrothed to Another.

"If anyone should carry off a woman betrothed to another, we hereby decree that half of the property of the ravisher shall be given to the girl, and the other half to her betrothed. But if he should have little or no property, he shall be given up, with all his possessions, to those above mentioned; so that the ravisher having been sold as a slave, they may have an equal share in the price paid for him. The ravisher himself, if the crime shall have been consummated, shall be punished."

FLAVIUS CHINTASVINTUS, KING.

VII. Within what Time it is Lawful to Prosecute a Ravisher; and Whether any Marriage Contract can be entered into with Him by the Girl or her Parents.

"The ravisher of a virgin or a widow can only be prosecuted within thirty years after the commission of the crime. If a marriage contract shou[illegible] be entered into by him with the parents of the girl, or with the girl herself, or with the widow, said contract shall not be illegal. After thirty years have elapsed, as aforesaid, all prosecutions shall be barred."

FLAVIUS RECESVINTUS, KING.

VIII. Where a Slave carries off a Freewoman by Force.

"It is the province of equity to make laws concerning the future, where doubt exists in the present. Where slaves, with the knowledge, or under the order of their master, carry off any woman by force, the master shall be required by the judge to give the satisfaction required by law. And if slaves should perpetrate such crimes against the will of their master, they shall be arrested by the judge, and, after having been scalped, shall receive three hundred lashes with the scourge. Any slave who has violated a freeborn woman shall undergo the extreme penalty of the law."

FLAVIUS CHINTASVINTUS, KING.

IX. Where a Slave carries off a Freedwoman by Force.

"If a slave should be convicted of having carried off a woman who has been freed, and if the said slave is of good character, and the woman also, his master shall pay a hundred solidi on his behalf. Should he be unwilling to do this, he must surrender the slave, without delay, so that it may not be possible for him to marry the woman. If, however, they should be married at any time, and children should be born to them, the master shall have both the slave and his children, as slaves. But if a slave should be known to be coarse and degraded, and should be convicted of having carried off a freedwoman of good character, his master shall pay to the aforesaid woman as much as the slave is worth, and the latter shall receive a hundred lashes with the scourge, shall be scalped, and shall forever remain in servitude in the power of his master."

ious publishing company, Inc.

her own will, and they should have protected her honor, they shall lose the half of their property, which shall be given to their master, and, in addition, they shall each receive fifty lashes in public on that account, admonished by him, may take warning. All accessories, who were present, shall receive the punishment prescribed by another law. And the husband, incensed by a former law, shall lose both his property and his rank."

ANCIENT LAW.

V. Where anyone carried away by violence a woman who was betrothed to another.

"If anyone should carry off a woman betrothed to another, he should forfeit that half of the property of the ravisher shall be given to the girl, and the other half to her betrothed. But if he should have little or no property, he shall be given up, with all his possessions, to their elders mercifully so that the ravisher having been sold as a slave, they may have an equal share in the price paid for him. The ravisher himself, if the crime shall have been consummated, shall be punished."

FLAVIUS CRISPUS VICTORINUS, KING.

VII. Within what Time it is Lawful to Prosecute a Betrothed and Another Who Contract can be Rescued Into his Own by the Other Parents.

"The ravisher of a virgin or a widow can only be prosecuted within thirty years after the commission of the crime. If a marriage contract should be entered into by him with the parents of the girl, or with the girl herself, or with the widow, said contract shall not be illegal. After thirty years have elapsed, as aforesaid, all prosecution shall be barred."

FLAVIUS HERCULIUS CONSTANTINUS, KING.

VIII. Where a Slave carries off a Freewoman by Force.

"It is the province of equity to make laws concerning the future, whose duty exists in the present. Where slaves, with the presumption, exceed the order of their master, carry off any woman by force, the master should be required by the judge to give the satisfaction provided by law. And if slaves should perpetrate such crimes against the will of their master, they shall be arrested by the judge, and, after having been scourged, shall forfeit three hundred lashes with the scourge. Any slave who has violated a freeborn woman shall undergo the extreme penalty of the law."

FLAVIUS CONSTANTIUS, KING.

IX. Where a Slave carries off a Freewoman by Force.

"If a slave should be convicted of having carried off a woman who has been freed, and if the said slave is of good character, and the woman also, his master shall pay a hundred sollidi as his fourth. Should he be unwilling to do this, he must surrender the slave, without delay, so that it may not be possible for him to marry the woman. If, however, they should be married at any time, and children should be born to them, the master shall have both the slave and his children, as aforesaid. But if a slave should carry off a freedwoman of good character, his master shall pay to the aforesaid woman as much as the slave is worth, and the latter shall forfeit a hundred lashes with the scourge, and shall forever remain in servitude in the power of his master."

FLAVIUS CHINTASVINTUS, KING.

X. Where a Slave carries off the Female Slave of Another by Force.

"If a slave should carry off the female slave of another by force, he shall receive two hundred lashes, and have his head shaved; and, if the master of the female slave desires it, he shall be separated from her."

XI. Concerning those who Deceive Girls, or the Wives of Others, or Widows; and Concerning those who Compel by Force, and without the Royal Command, any Freeborn Girl or widow to take a Husband.

"Everything that pollutes the honor and dignity of human life must be restrained by law. Therefore those who solicit wives to commit adultery, or deceive the daughters of others; or widows; or women who are betrothed; whether they use, as their agents, persons who have been freed, or who are born free, or slaves of either sex; as soon as their crime shall be made apparent by positive testimony, they shall be arrested, along with their emissaries, by order of the judge; and shall be delivered up into the power of him, whose wife, daughter, or betrothed relative, they are convicted of having solicited, to be disposed of at his pleasure; as he is the person whom the conjugal condition, or the relationship by blood, designates as the legal avenger of such a crime. Any person who shall, by force, compel a freeborn girl or widow, without the royal order, to take a husband, shall be compelled to pay five pounds of gold to him to whom the injury was done; and the marriage shall be declared void, unless the woman shall consent to it of her own free will."

THE GLORICUS FLAVIUS RECESVINTUS, KING.

XII. Concerning Freemen and Slaves who are Proved to have been Implicated in the Crime of Rape.

"Anyone who is known to have assisted, or to have been present, at the carrying off of any woman by force, if he is a freeman, shall pay a fine of six ounces of gold, and shall publicly receive fifty lashes with the scourge. If he is a slave, and acted without the consent of his master, he shall receive a hundred lashes. But if he should commit this crime with the consent of his master, the latter must give such satisfaction in his stead as has already been stated."

TITLE IV. CONCERNING ADULTERY.

ANCIENT LAW.

I. Where a Woman Commits Adultery with, or without, the Connivance of her Husband.

"If anyone should have intercourse with the wife of another by force, and the party who committed the crime should have legitimate children by a former marriage; he himself, without his property, shall be delivered up to the husband of the woman. But if he should have no legitimate children to whom his property can legally descend, he shall be surrendered, with all his possessions, into the power of the husband, to be disposed of at his pleasure. And if the woman should have consented to the act, both of them shall be delivered up to the husband."

ANCIENT LAW.

II. Where a Girl or a Woman who has been Betrothed is found Guilty of Adultery.

## THE NORSEMEN MARRIAGE ORDINANCE, 1190.

XII. Concerning Freemen and Slaves who are Proved to have been Implicated in the Crime of Rape.

"Anyone who is known to have assisted, or to have been present, at the carrying off of any woman by force, if he is a freeman, shall pay a fine of six ounces of gold, and shall publicly receive fifty lashes with the scourge. If he is a slave, and acted without the consent of his master, he shall receive a hundred lashes. But if he commit this crime with the consent of his master, the latter must give such retaliation in his stead as he himself deem suited."

## TITLE IV. CONJUGAL AFFAIRS.

### A CIVIL LAW.

I. Where a Woman Commits Adultery with, or without, the Connivance of her Husband.

"If anyone should have intercourse with the wife of another by force, and the party who committed the crime should have forfeited oblation by former martyrdom, he himself, without his property, shall be delivered up to the husband of the woman. But if he should have no legitimate children of his own, his property can legally ascend, he shall be surrendered, with all his possessions, into the power of the husband, to be disposed of at his pleasure. And if the woman should have conducted to the act, both of them shall be delivered up to the husband."

### ADULTERY LAW.

II. Where a Girl or a Woman who has been Betrothed is found Guilty of Adultery.

"If a slave should carry off the female slave of another by force, he shall receive two hundred lashes, and have his head shaved; if the master of the female slave desires it, he shall be separated from her.

III. Concerning those who Deceive Girls, or the Wives of Others, or Widows; and Concerning those who Depart by Force, and without the Consent, any Freeborn Girl or widow to take a Husband.

"Everything that pollutes the decor and dignity of human life must be regulated by law. Therefore those who solicit wives to commit adultery, or deceive the daughters or widows of others or of people who are betrothed another husband, as their agents, persons who have been freed, or who are born free, or slaves of either sex as soon as their crime shall be made apparent by positive testimony, they shall be tortured, along with their co-adjutor, by order of the judge and shall be delivered up into the power of him whose wife, daughter, or betrothed relative, they are convicted of having solicited, to be disposed of as his pleasure as be it the person whom the conjugal condition, or the relationship by blood, designates as the legal avenger of such a crime. Any person who shall, by force, conceal a freeborn girl or widow, without the royal order, to have married, shall be compelled to pay five pounds of gold to him to whom the judge may have sent and the marriage shall be declared void, unless the woman shall consent to it of her own free will."

"If a marriage contract has been entered into between an intended husband and the parents of an intended wife; or with the woman herself, if she has the right to make the contract; the dowry being duly given, and an agreement made in writing, before witnesses, according to custom, and as is prescribed by law; and, afterwards the girl or the woman is convicted of having committed adultery, or of having betrothed herself to another man, or having married; she, along with her unlawful husband, or adulterer, or betrothed to whom she has given herself contrary to her solemn agreement, shall be delivered up as slaves, with all their property, to the person to whom she was first betrothed; in case the adulterer, or violator of the law, should have no children by a former marriage, or the woman herself should not have any. But if it should be proved that they have legitimate children, then all their possessions shall belong to those children. But the man and the woman who have committed adultery, or have betrothed themselves, or have married, shall both be delivered up as slaves into the power of him to whom the aforesaid woman bound herself by her marriage contract."

ANCIENT LAW.

III. Concerning the Adultery of a Wife.

"If the wife of anyone should commit adultery, and not be caught in the act, her husband may accuse her before a judge by the introduction of competent evidence. And if the adultery of the woman should be plainly manifest, both adulterer and adulteress, according to the provisions of a former law, shall be given up to the husband, to be disposed of in any way he may select."

ANCIENT LAW.

IV. Where an Adulterer, along with an Adulteress, is Killed.

"If the husband, or the man who was betrothed to the woman, should kill the adulterer along with the adulteress, it shall not be considered criminal homicide."

FLAVIUS RECESVINTUS, KING.

V. Where her Father, or her Relatives, Kill a Girl who has been Guilty of Adultery in their House.

"If a father should kill his daughter, while she is in the act of committing adultery in his own house, he shall be liable to no penalty or reproach. But if he should wish to spare her life, he shall have full power to dispose of her and the adulterer, according to his will. Likewise, her brothers or her uncles, after the death of her father, shall have the same power."

ANCIENT LAW.

VI. It is not Lawful for Slaves to put Persons to Death who are taken in Adultery.

"While parents have the undoubted right to kill adulterers caught in their houses, slaves have no such authority. But if slaves should discover them, they may keep them in honorable custody, until they can be delivered over to the master of the house, or to the judge; and, after having been found guilty by reliable evidence, the legal penalty shall be inflicted upon them."

ANCIENT LAW.

VII. Where a Girl, or a Widow, goes to the House of Another, in order to commit Adultery, and the Man should wish to Marry Her.

[illegible]

[illegible]

[illegible]

"If a freeborn girl, or a widow, should go to the house of another for the purpose of committing adultery, and the man who is implicated should wish to marry her, and her parents, if she has any, should acquiesce; he shall give to the parents of the girl as large a sum as they may demand or as much as shall be agreed upon between him and the woman herself. But the woman shall not share with her brothers in the inheritnace of her parents, unless the latter desire it."

ANCIENT LAW.

VIII. Where a Freeborn Woman commits Adultery with Anyone.

"If any freeborn woman should be detected in having voluntarily committed adultery with any man, and if, afterwards, he should wish to marry her, he shall be permitted to do so. But if he should be unwilling, she shall be considered guilty of having voluntarily committed a crime."

ANCIENT LAW.

IX. Where a Freeborn Woman commits Adultery with the Husband of Another.

"If any freeborn woman should commit adultery with the husband of another, and should be convicted of it by conclusive evidence, she shall be surrendered to the wife of the husband with whom she was guilty, that the revenge of the woman injured may be fully satisfied."

ANCIENT LAW.

X. Slaves of Both Sexes may be Tortured to reveal the Adultery of their Masters.

"In order to prove the commission of adultery by either a master or a mistress, their slaves of both sexes may be put to the torture, in order that the truth may be the more certainly discovered and established, beyond question."

ANCIENT LAW.

XI. Whether it shall be Lawful to set a Slave at Liberty, in order to Conceal the Crime of Adultery.

"If anyone, for the sake of concealing the truth, and for fear a slave may be tortured in order to prove an act of adultery, should liberate that slave, his act shall be void."

XII. Concerning the Property of Husbands or Wives who have committed Adultery.

"We have already decreed, by a former law, that an adulterous wife, as well as the adulterer, shall be delivered up to her husband. And, because doubt concerning the disposition of their property may sometimes arise in the minds of the judges, therefore we consider it necessary to especially provide, that if the adultery of the wife should be manifest upon evidence introduced by her husband, and if neither adulteress nor adulterer should have legitimate children by a former marriage, the entire inheritance of both of them, along with their persons, shall be delivered upon into the power of the husband of the woman. But if the adulterer should have legitimate children by a former marriage, his property shall belong entirely to them, and only his person shall be surrendered to the husband of the adulteress. But if the adulterous wife should be known to have legitimate children, either by a former, or later marriage,

publishing company inc

ANCIENT LAW.

VIII. Where a Freeborn Woman Commits Adultery with Anyone.

"If any freeborn woman should be detected in having voluntarily carnal adultery with any man, and if, afterwards, he should wish to marry her, he shall be permitted to do so. But it he should be unwilling, she shall be condemned unjustly of having voluntarily committed a crime."

ANCIENT LAW.

IX. Where a Freeborn Woman Commits Adultery with the Husband of Another.

"If any freeborn woman should commit adultery with the husband of another, and should be convicted of it by conclusive evidence, she shall be surrendered to the wife of the husband with whom she has committed the revenge of the woman injured may be fully satisfied."

ANCIENT LAW.

X. Slaves of both Sexes may be Tortured to Reveal the Adultery of their Masters.

"In order to prove the commission of adultery by either a master or a mistress, their slaves of both sexes may be put to the torture. In order that the truth may be the more certainly discovered and established, the usual questions."

ANCIENT LAW.

XI. Whether it shall be Lawful to Act in Cases of Liberty, in order to Conceal the Crime of Adultery.

"If anyone, for the sake of concealing the truth, and for fear a slave may be tortured in order to prove an act of adultery, should liberate that slave, his act shall be void."

XII. Concerning the Property of Husbands or Wives who have committed Adultery.

"He have already decreed, by a former law, that an adulterous wife, as well as the adulterer, shall be delivered up to her husband. And, because their connection the dispositions of their property may sometimes arise in the minds of the judges, therefore we consider it necessary to especially provide, that if the adultery of the wife should be manifest upon evidence introduced by her husband, and if neither adulterer nor adulteress should have lawfully obtained by a former marriage, the entire inheritance of both of them, along with their persons, shall be delivered upon into the power of the husband of the woman. But if the adulterer should have lawfully obtained by a former marriage, his property shall belong entirely to him, and only his person shall be surrendered to the husband of the adulteress. But if the adulteress should be known to have lawfully obtained children by a former marriage, or into matters,

the portion belonging to the children of the former marriage shall be set apart and delivered to them; but the husband shall have the portion which would otherwise belong to her children born after she had been convicted of adultery, and he may bequeath it, after his death, to those children. And, after the adulterous wife has been brought back into the power of her husband it shall not be lawful for any marital relations to exist between them. If, in violation of this, such relations should thereafter exist, he himself shall have none of her property, and all of it shall be given to her legitimate children; or, if there are no children, to her other heirs. A similar decree is hereby made concerning persons who have been betrothed."

FLAVIUS CHINTASVINTUS, KING.

XIII. Concerning those Persons who have a Right to bring Accusations of Adultery, and what Proof of the Crime should be Made.

"If the law does not punish the perpetrators of crime, their audacity will have no bounds. For this reason, and because certain wives who hate their husbands abandon themselves to adultery, and so affect the minds of their husbands, either by the administration of drugs, or by the devices of witchcraft, that they are unable to publicly accuse their wives or to leave them, on account of the affection they bear them; therefore, in such cases it is hereby decreed, that if the adulteress or her husband have any legitimate sons who are of age, it shall be lawful for them to act in the place of the husband, and to prove the fact of adultery in court. But if there are no sons, or they have not the proper age or experience to conduct thie matter lawfully; in order that there may be no delay in the punishment of adultery; or for fear that the adulteress may kill her husband; or her children or relatives may, for this reason, be deprived of her property; it is hereby decreed that the relations of the husband, shall have the power, under such circumstances, of accusing the said adulteress. And if, after accepting this trust, the adultery of the woman should be plainly proved in court, then both parties who have been convicted of this crime shall be at once given up, with all their property, to serve as slaves those who, according to the provisions of the law, have proved this accusation."

"We make, however, an exception in favor of such as have manifested signs of repentance, and seem to be worthy of pity; and we hereby decree that they shall receive the punishment of the scourge. And if the sons of the adulteress were not of sufficient age, at the time the crime was committed, to appear in court, the relatives of the husband, after the death of the latter, if there are no sons, shall be entitled to the property of the woman. If the sons should be unwilling, or not of a sufficient age or experience to prosecute the adulteress; then the nearest relative of the husband, who produced evidence of the crime, shall have the fifth part of the property of the adulteress for his pains, and the other four-fifths shall belong to the sons aforesaid. If there should be any lukewarmness on the part of the relatives, or negligence on the part of the sons, or if the parties should be corrupted by gifts; the conduct of such matters shall not be committed to persons of this character; and should the cause come to the knowledge of the king, he shall determine, according to his mercy; either by whom the case must be prosecuted, or how much of the property of the woman the prosecutor shall have as a fee for his trouble. But because it is difficult to prove the adultery of a woman by the evidence of persons who are free, as generally this crime is perpetrated in secret; henceforth, whenever the evidence of a freeborn person is not available to prove adultery, it shall be lawful for the person aforesaid, to whom it is granted by the present law to bring an accusation of this kind, to put the slaves of both parties to the torture, that the crime may be proved in court."

law publishing company inc.

PLAINTIFF'S CONTRIBUTION, ETC.

XIII. Concerning those Persons who have a Right to bring Actions of Adultery, and what Proof of the Crime should be Made.

"If the law does not punish the perpetrator of crime, their audacity will have no bounds. For this reason, and because certain others who have their passions abandon themselves to adultery, and so offend the laws of their husbands, either by the adulteration of issue, or by the devices of witchcraft, that they are unable to publicly accuse their wives or to prosecute them, on account of the affection they bear them; therefore, in such cases it is hereby decreed, that if the adulteress or her husband have any legitimate sons who are of age, it shall be lawful for them to act in the place of the husband, and to prove the fact of adultery in court. But if there are no sons, or they have not the proper age or experience to conduct the matter lawfully in order that there may be no delay in the punishment of adultery or for fear that the adulteress may kill her husband or any children or relatives any, for this reason, to suspend of her property; it is hereby decreed that the relations of the husband, shall have the power, under such circumstances, of bringing the said adulteress, and if, after accepting this trust, the adultery of the woman should be plainly proved in court, then both parties who have been convicted of this crime shall be at once given up, with all their property, to some or other of those who, according to the provisions of the law, have proved this accusation.

"We make, however, an exception in favor of such as have married slaves or servants, and seek to be worthy of gift; and we hereby decree that they shall receive the punishment of the accused. And if the case of the adulteress was not of sufficient age, at the time the crime was committed, to subject her to punishment, the relatives of the husband, after the death of the latter, if there are no sons, shall be entitled to the property of the woman. If the sons should be unwilling, or not of a sufficient age or the woman, they shall be entitled to the property, to the exclusion of the adulteress, or to one of the husband's relatives, at the option

ANCIENT LAW.

XIV. Where a Freedman, or a Slave, has been Convicted of having committed Adultery, with Violence, upon a Freeborn Virgin, or Widow.

"If anyone should compel a virgin or widow, who is freeborn, to commit adultery or fornication; if he should be freeborn, he shall be scourged with a hundred lashes, and be given forever to serve as a slave her whom he has injured. A slave convicted of such a crime shall be burned. And a freeman who has been proved to be guilty of a crime of this kind, shall never be permitted to marry her whom he has violated. But if the woman herself, after she has received the man as a slave, should marry him, she shall then undergo the penalty of her base action, and shall, along with all her property, be delivered over to her own heirs, to forever serve as a slave."

ANCIENT LAW.

XV. Where a Freeman, or a Slave without the Knowledge of his Master, commits Adultery with the Female Slave of Another.

"If anyone should be convicted of having committed adultery with a female slave outside the house of her master, the latter shall have the power of punishing only the female slave. Where either a freeman or a slave is convicted of the commission of such a crime with a female slave in the house of her master; if he should be freeborn, and the slave of good reputation and superior rank, he shall receive a hundred lashes, without any imputation of infamy. If the slave is of inferior rank, she shall receive fifty lashes; and a male slave, guilty of such an offence with the female slave of another, shall receive a hundred and fifty lashes."

ANCIENT LAW.

XVI. Where a Female Slave is proved to have committed Adultery with Another by Force.

"If anyone should violate the person of a female slave, and should be seized in the house of her master; or if he should be convicted of having committed the crime anywhere else; if a slave, he shall receive two hundred lashes; if a freeman, fifty; and the latter shall be compelled to pay, in addition, thirty solidi to the master of the female slave. But if the master should have ordered the slave to commit the act, the latter shall undergo the penalty and scourging prescribed by a former law."

ANCIENT LAW.

XVII. Concerning Freeborn Women, or Female Slaves, of Bad Character; and Where Judges Refuse to Investigate or Punish their Crimes.

"If any freeborn girl or woman should publicly practise fornication, be known as a harlot, and be shamelessly given to soliciting men; after having been arrested by the governor of the city, she shall receive in public two hundred lashes, and shall be sent away, under the condition that she shall not, afterwards, be guilty of similar conduct, or ever again enter the city. And if she should ever return, she shall be sentenced by the governor to receive three hundred lashes more, and shall be given as a slave to some pauper, and never be permitted to go freely about the city again. And if she should admit that she has pursued her evil life with the knowledge of her father and mother, and thus should seem to have acquired her degradation through association with her parents, and her father and mother should be convicted of having had such guilty knowledge; each of them shall receive a hundred lashes."

...ews publishing company, inc.

ANCIENT LAW.

XIV. There a Freeman or a Slave, has been Convicted of having committed Adultery, with Violence, upon a Freeborn Virgin, or Widow.

"If anyone should commit a virgin or widow, who is freeborn, to commit adultery or fornication; if he should be freeborn, he shall be accepted with a hundred lashes, and be given forever to serve as a slave; but a freeman injured. A slave convicted of such a crime shall be buried. And a freeman who has been proved to be guilty of a crime of this kind, shall never be permitted to marry her whom he has violated. But if the woman herself, after she has received the cut as a slave, should marry him, she shall then undergo the penalty of her base action, and shall, along with all her property, be delivered over to her own lords, to forever serve as a slave."

ANCIENT LAW.

XV. There a Freeman, or a Slave without the Knowledge of his Master, commits Adultery with the Female Slave of Another.

"If anyone should be convicted of having committed adultery with a female slave outside the house of her master, the latter shall have the power of punishing only the female slave. There either a freeman or a slave to convicted of the commission of such a crime with a female slave in the house of her master it be should be freeborn, and the slave of good reputation and superior rank, he shall receive a hundred lash, without any instruction of infamy. If the slave is of inferior rank, she shall receive fifty lashes; but a male slave, guilty of such an offence with the female slave of another, shall receive a hundred and fifty lashes."

ANCIENT LAW.

XVI. There a Slave is proved to have committed Adultery with Another by Force.

"If anyone should violate the person of a female slave, and should be seized in the house of her master; or if he should be convicted of having committed the crime elsewhere after it a slave, he shall receive the hundred lashes; if a freeman, fifty; and the latter shall be compelled to pay, in addition, thirty sciali to the master of the female slave. But if the master should have ordered the slave to commit the act, the latter shall undergo the penalty and accordingly prescribed by a former law."

ANCIENT LAW.

XVII. Concerning Freeborn Women, or Female Slaves, of Bad Character and There Judges Refuse to Inquesigate or Punish their Crimes.

"If any freeborn girl or woman should publicly practice fornication, be known as a harlot, and be accordingly given to solicitation most after having been arrested by the governor of the city, he shall receive in public two hundred lashes, and shall be sent away, under the condition that he shall not, afterwards, be guilty of similar conduct, or ever again enter the city. And if he should return, he shall, sentenced by the governor to be given fifty more stripes, and shall be given as a slave to some person, and never be permitted to go freely about the city again. And if he should marry one who has planned for evil life with the knowledge of her father and notary, and thus should seem to have acquired her fornication through necessity, and her father and mother should be convicted of having been in collusion with her parents, and her father and mother should be convicted of having let her evil intentions [illegible] of them shall receive a hundred lashes."

"If a female slave should be convicted of leading such a life, she shall be arrested by order of the judge; shall receive three hundred lashes in public; and, having had her head shaved, shall be returned to her master, with the understanding that he will cause her to be removed to such a distance from the city, or will sell her in such a locality, that she shall be unable to return. But if he should be unwilling to send her away, or to sell her, and she should return, he shall receive fifty lashes in public; and the said female slave shall be given to some pauper whom the king, judge, or governor may select, with the admonition that she be not again permitted to enter the city. If she should declare that she had acted with the consent of her master, gaining money for him through her vicious practices, and he should be publicly convicted of this, he shall receive the same number of lashes as she would otherwise have received."

"And, in like manner, we decree that all others should be dealt with, who either in villages or towns, have been arrested for similar crimes. If any judge should be unwilling to investigate such offences, or prosecute, or correct them, he shall receive a hundred lashes by order of the governor of the city, and shall pay thirty solidi to him whom the king shall designate."

FLAVIUS RECESVINTUS, KING.

XVIII. Concerning the Impurity of Priests and other Ministers of Religion.

"As sacred authority demands purity of life, so it should also be required of its ministers; and it is our duty to put an end to all unlawful conduct, and attempt to act in compliance with the Divine commandments. Therefore, if it should be established by undoubted evidence, that any priest, deacon, or sub-deacon, has married or committed fornication or adultery with a woman doing penance, a virgin, a wife, or any other woman; as soon as the fact shall come to the knowledge of the bishop, or the judge, he shall put an end to such a connection at once."

"When the offender has been brought back under the power of his ecclesiastical superior, he shall be placed in confinement, and compelled to do penance according to the holy canons of the Church; and if the bishop, through indulgence, should neglect to place him under restraint as aforesaid, he shall pay two pounds of gold to the royal treasury, and shall no longer be permitted to delay the punishment of the offender. Where the bishop is unwilling to act, he shall either call a council, or bring the matter to the attention of the king."

"Such women as are implicated in the aforesaid enormities, shall be given a hundred lashes by order of the judge and all access to them shall be prohibited; and the law, as established by the cannons of the Church concerning this offence, shall be enforced by the bishops. In avenging such crimes, we do not grant the right to accuse or punish to every one indiscriminately, unless the proof should be overwhelming, or the guilt of the parties fully established; as we disclaim all intention of opposing the precepts of the Holy Fathers, or of violating, in any way, their ancient and sacred privileges."

TITLE V. CONCERNING INCEST, APOSTASY AND PEDERASTY.

FLAVIUS CHINTASVINTUS, KING.

I. Concerning Incestuous and Adulterous Marriages in General.

...ious publishing company, inc.

"If a female slave should be convicted of keeping such a life, she shall be arrested by order of the Judge, shall receive thirty lashes publicly and, having had her head shaved, shall be returned to her master, with the understanding that he will cause her to be reared to such a life. If she be found from the city, or will not consent to such a life, she shall be taken from the city, or will volunteer to send her away, or to sell her, and she should return, be shall receive fifty lashes in addition and the said female slave shall be given to some pauper when the King, Judge, or governor may select, with the admonition that she be not again permitted to enter the city. If she should declare that she had acted with the consent of her master, raising money for his through her various prostitutions, and he should be publicly convicted of this, he shall receive the same number of lashes as she would otherwise have received."

"And, in like manner, we decree that all others should be dealt with, who either in villages or towns, have been arrested for similar crimes. If any Judge should be unwilling to investigate such offenses, or prosecute, or condemn them, he shall receive a hundred lashes by order of the governor of the city, and shall pay thirty sols to his wife the King shall decide."

TITLE XVIII. Concerning the Impurity of Priests and other Ministers of Religion.

"As decent authority demands purity of life, so it should also be required of its ministers; and it is our duty to put an end to all unlawful conduct, and attempt to act in compliance with the Divine commandments. Therefore, it is should be established by unwonted evilness, that any priest, deacon, or sub-deacon, has married or committed fornication or adultery with a woman doing penance, a virgin, a wife, or any other woman as soon as the fact shall come to the knowledge of the bishop, or the Judge, he shall put an end to such a connection at once."

"When the offender has been brought back under the power of his ecclesiastical superior, he shall be placed in confinement, and compelled to do penance according to the holy canons of the Church; and if the bishop through inhumanness, should neglect to place his under restraint as aforesaid, he shall pay two pounds of gold to the royal treasury, and shall no longer be entitled to delay the punishment of the offender. Where the bishop is unwilling to act, he shall either call a council, or bring the matter to the attention of the King."

"Such women as are implicated in the aforesaid enormities, shall be given a hundred lashes by order of the Judge and all access to them shall be prohibited, and the Law, as established by the canons of the Church is to be carried out. Those who shall be enforced by the bishops, in avenging such crimes, we do not grant the right to absolve or punish to purify the aforementioned title offenses, shall be enforced to overwhelming, or the multitude of the parties duly established as we directed all intercession of officials and sacred privileges."

TITLE V. CONCERNING INCEST, ADULTERY AND FORNICATION.

"1. Concerning Incestuous and Adulterous Marriages in General.

"No one shall marry, or maintain incestuous relations with, any woman belonging to the family of his father, or his mother; or of his grandfather, or his grandmother; or with the betrothed of his brother, or the widow of any of his relatives. Therefore, it shall not be lawful to defile the blood of such as are related even to the sixth degree, either by marriage or otherwise; those persons only being expected, who have been married with the permission of the king, before the making of this law, and the said persons shall, in no way, be affected by its provisions. This law shall also apply to women. If any person should violate it, the judge shall immediately order them to be separated, and shall cause them to be placed in monasteries, according to their sex, there to perform perpetual penance. The disposition of the property of these offenders has been provided for by another law."

FLAVIUS RECESVINTUS, KING.

II. Concerning Incestuous and Adulterous Marriages and Debauchery, either with Holy Virgins, or with Widows and other Women while doing Penance.

"It is our royal duty to promulgate laws to be enforced throughout all the provinces of our kingdom, to the end that crime may be prevented in the future, and that justice may put an end to the deeds of the wicked. Many persons, in defiance of the admonitions of the Divine Law, and in opposition to the honorable duties of life, are accustomed either by violence, or with consent, to contract marriage with virgins who have been devoted in the service of God, and have taken the vow of chastity with the benediction of the priest, and according to the cannons of the Church; or with other women nearly related to themselves; and, in this way, have polluted with vice that chastity which was dedicated to God, or which should have been respected on account of the ties of consanguinity. Such conduct, whether it relates to men or women, is both abhorrent to good morals, and a reproach to the True Faith. Therefore, in the name of God and the Holy Catholic Church, we decree that, hereafter, as is also provided by the ecclesiastical canons, no one, either by force or consent, shall take as a wife, any virgin devoted to God, or any widow, who has assumed the habit of any order; or anyone who is performing penance; or any near relative of their own; or anyone with whom his connection might be branded with infamy; because that cannot be a true marriage, which from good becomes evil, and which, under a false name, is nothing more than incest and fornication. And if any other persons in our kingdom should attempt to commit a crime of this kind, they shall be separated, and condmned to perpetual exile, at the instance of the judge or priest, even if no one should accuse them; nor shall any time which may have elapsed, be pleaded in their defence."

"The property of such persons which has been seized for the crime, shall belong to the children of a former marriage; and if there should be no such children, to those born of this marriage; and the latter shall not be liable to reproach on this account, for those who are born out of wedlock are purified by the ceremony of baptism. But if there should be no children whatever, the inheritance shall descend to those to whom the provisions of former laws have given legitimate succession. The same regulation shall apply to persons in orders, whom the Canon Law forbids to marry."

"Those woman are excepted from this decree who have been forced into marriage, and have not subsequently given their consent thereto. Any judge, or priest, who is aware that such an offence has been committed, and neglects to punish it, shall be compelled to pay five pounds of gold to the royal treasury; and, in case he should not be able or willing to inflict such punishment, he shall bring the matter before the king, in order that he may impose the penalty which is not in the power of the magistrate or priest to inflict."

"No one shall marry, or maintain incestuous relations with, any woman belonging to the family of his father, or his mother, or his grandfather, or his grandmother; or with the betrothed of his brother, or the widow of any of his relatives. Therefore, it shall not be lawful to defile the bed of such as are related even to the sixth degree, either by marriage or otherwise; those persons only being excepted, who have been married with the permission of the king, before the making of this law, and the said persons of the property of those offenders has been provided for by another law."

## FLAVIUS THEODOSIUS, KING.

11. Concerning Incestuous and Adulterous Marriages and Debauchery, either with Holy Virgins, or with Wives and other Women while doing Penance.

"It is our royal duty to promulgate laws to be enforced throughout all the provinces of our kingdom, to the end that crime may be prevented in the future, and that justice may put an end to the deeds of the violent. May persons, in defiance of the admonitions of the Divine law, and in opposition to the honorable duties of life, are accustomed either by violence, or with consent, to contract marriage with virgins who have been devoted to the service of God, and have taken the vow of chastity with the benediction of the priest, and according to the canons of the Church of with other women nearly related to themselves; and, in this way, have polluted with vile chastity which was dedicated to God, or which should have been respected on account of the ties of consanguinity. Such conduct, whether it relates to men or women, is both abhorrent to good morals, and a reproach to the True Faith. Therefore, in the name of God and the Holy Catholic Church, we decree that, hereafter, as is also provided by the ecclesiastical canons, no one, either by force or consent, shall take as a wife any virgin devoted to God, or any widow, who has received the habit of any order; or anyone who is performing penance or any nun; relative of their own or anyone with whom the connection might be treated with infamy because this cannot be a true marriage, which from good becomes evil, and which, under a false name, is nothing more than incest and fornication. And if any other persons in our kingdom should attempt to commit a crime of this kind, they shall be separated, and condemned to perpetual exile, at the instance of the Judge or private, even if no one should become their accuser nor shall any time which may elapse, be pleaded in their defence."

"The property of such persons which has been seized for the crime, shall belong to the children of a former marriage and if there should be no such children, to those born of said marriage; and the latter shall not be liable to reproach on this account, for those who are born out of wedlock do little to reproach on the conduct of parents. But if there should be no children by the former [illegible] shall devolve to those to whom the privileges of succession, the inheritance shall descend to those, to whom the privileges of former laws have given legitimate successions. The same regulation shall operate, whatever, the inheritance may be. And if any [illegible] shall be guilty of such crimes, and convicted of perjury, he shall be punished by the forfeiture of his property, and shall be compelled to pay five pounds of gold to the Royal treasury and, in case he should not be able or willing to inflict such punishment, he shall bring the matter before the king, in order that he may impose the penalty which is not in the power of the magistrate of police to inflict."

## FLAVIUS CHINTASVINTUS, KING.

III. Concerning Men and Women who Illegally Assume the Tonsure and Dress of Religious Orders.

"We should eradicate the reproach of apostasy, in order that we may enjoy the favor of God. For if we think it is an evidence of piety to punish sins of less importance, to a much greater extent should we visit with severe censure any crime committed against the Divine Power. Therefore, we decree by this law, which shall remain perpetually in force hereafter; that whoever adopts the dress of a religious order, and assumes the honorable mark of the tonsure, either for the purpose of performing penance, or through the pious wishes of parents, and without any suspicion of fraud; or through their own will and devotion to the Church; and afterwards, apostatizing, resumes intercourse with the laity; shall, at the instance of anyone, be brought against by force under the control of the religious order to which they belong; and, branded with infamy, shall be forever confined in monasteries, and subjected to the severest penance. In cases of this kind, indulgence shall only be shown to those who have been influenced of their own accord; provided that among such persons a man has not taken another wife, or a woman another husband. And those also shall be exempt from the operation of this law, who assumed their vows when they neither knew what they were doing, nor remembered what they had done. The property of persons practising such deception shall belong to their sons and their relatives, as follows: if the man is married and has children, and should have received any gift from his wife, it shall be transferred to her, and, after her death, shall descend to their children. But if she should be dead, or they should have no children, the lawful heirs of the offender shall have the property. But whatever, at any time, the husband received through his wife, shall belong to her nearest heirs."

"This law shall also apply to women; for instance, where any virgin or widow, as a penitent lays aside the clothing of the laity, and afterwards resumes it; or marries; she shall undergo the same penalty and loss of property as has been decreed concerning men, to wit: the children and heirs of such a woman shall have her property. The relatives of a husband, however, shall be entitled to any gift previously presented by him to his wife. And, since women are more frequently involved in the fraud of apostasy, we hereby decree that whatever should be given by a man to his betrothed, or to his wife, before or after the nuptials, by way of dowry, shall belong, not to the heirs of the wife, but to the heirs of him who gave the dowry. Persons guilty of such offences shall not have the right to accuse anyone, or to testify, or to transact any business whatever in court; because those cannot be trusted in secular matters, who have been proved guilty of sacrilege in affairs relating to our Holy Religion."

## FLAVIUS EGICA, KING.

IV. Concerning the Restraint of Fraud Peculiar to Widows.

"Certain widows are accustomed to shrewdly mingle fraud with devotion, and, by the union of religious and secular garments, give themselves an opportunity for transgression at their will. Thus, during the time of their mourning, they put on a religious dress; and, afterwards, for purposes of deception, put on other garments under the religious habit; and for this reason, to those who see them, appear other than what they are. Therefore, that an end may be put to fraud of this kind, we decree, by this law, that hereafter, when any widow wishes to excuse herself for practising this deception, that within she wears one kind of dress, and outside another; that portion which is visible, and which she has assumed for purposes of duplicity,

III. Concerning Men and Women who Illegally Assume the Tonsure and Those of Religious Orders.

We should eradicate the reproach of apostasy, in order that no one may occupy the favor of God. For it is to it is an evidence of piety to pursue vice of less importance, to a much greater extent should we visit severe censure any crime committed against the Divine Power. Therefore by decree by this law, which shall remain perpetually in force hereafter that whoever adopts the tenue of a religious order, and assumes the tonsure of the cloister, either for the purpose of perfecting himself, or through the pious wishes of parents, and without any suspicion of fraud or through their own will and devotion to the Church and afterwards, apostatizing, assume intercourse with the laity shall, at the instance of anyone, by process under the control of the religious order to which they belong, and bonded with infamy, shall be forever confined in some cloister, and subjected to the severest penance. In case of this kind, influence shall only be shown to those who have been influenced of their own accord provided that among such persons a man has not taken another wife, or a woman another husband. And those also shall forthwith from the operation of this law, be removed their vows when they neither know what they were doing, nor remembered what they had done. The property of persons of this kind, shall belong to their sons and their relatives, provided such deception shall not be exhibited, and should have no children. If the man is married and has children, and should live as follows: If the man is married and has children, and should live after death, shall descend to their children. But if she should do good, or they should have no children, the lawful heirs of the offender shall have the property. But whatever, at any time, the husband received through his wife, shall belong to her nearest heirs."

"This law shall also apply to women for instance, where any virgin vowed herself to God, or accepted the clothing of the laity, and afterwards left or widow, as a penitent lays aside the clothing of the laity, and lays aside vows or returns to the world, she shall undergo the same penalty and lose of property as has been decreed concerning men, to wit: the children and heirs of such a woman shall have her property. The relatives of a husband, however, shall be entitled to any gift previously presented by him to his wife. And, also women are more frequently involved in the fraud of apostasy, so hereby decree that whatever should be given by a man to his betrothed, not to his wife, before or after the nuptials, by way of dower, shall belong, not to the heirs of the wife, but to the heirs of him who gave the dower. Persons guilty of such offenses shall not have the right to assume orders, or to testify, or to transact any business whatever in court; neither shall they be treated in secular matters, who have been proved guilty of assuming illegitimate relations to our holy Religion."

FLAVIUS JULIA, KING.

IV. Concerning the Reception of Those Deserting to Rivers.

Certain citizens are accustomed to shrewdly migrate from one province, and, by the union of religious and secular pursuits, fix, themselves on opportunity for commerce at their will. Thus, during the time of their sojourning, they put on a religious front, ostensibly, for purposes of reception, but on other grounds the religious habit and for this reason, to those who see them, appear other than what they are. Therefore, right as out may be put to trust of this kind, we decree, by this law, that porters, who only allow others to assume herself for persuading this deception, that within one year of this kind of thing, and outside accident that portion which is visible, and which he has removed for purposes of duplicity,

shall be considered as designating her as a member of a religious order; and thus, not what she has adopted for the commission of sin, but what the eyes of every one perceive, is to be accepted as the sign of her religious profession. Any widow who, hereafter, attempts to excuse herself in this way, shall not only be subject to the penalties of the law, but shall also undergo the punishment prescribed by the cannons of the Church and shall not escape the justice of the king."

FLAVIUS CHINTASVINTUS, KING.

V. Concerning Federasty.

"That crime must not be unpunished which, in the violation of morality, has always been considered most execrable; we therefore decree, in cases of pederasty, where their guilt has been proved after proper investigation by the judge, that both parties shall be emasculated without delay, and be delivered up to the bishop of the diocese where the deed was committed, to be placed in solitary confinement in a prison; so that, against their will, they may expiate the crime which they are convicted of having voluntarily perpetrated."

"If, however, anyone should have been forced to commit this horrible offence, and is proved to have done so unwillingly, he shall then not be liable to punishment, if the person who discovered the crime should be present as a witness; but he who engaged in it voluntarily shall undergo the full penalty. The children, or legitimate heirs of married men who have been found guilty of this crime, shall have their property; and it shall be lawful for their wives, having received back their dowries, and retaining all their possessions, to afterwards marry whomsoever they will."

FLAVIUS EGICA, KING.

VI. Concerning Sodomy, and the Manner in which the Law should be Enforced.

"The doctrine of the orthodox faith requires us to place our censure upon vicious practices, and to restrain those who are addicted to carnal offences. For we counsel well for the benefit of our people and our country, when we take measures to utterly extirpate the crimes of wicked men, and put an end to the evil deeds of vice. For this reason we shall attempt to abolish the horrible crime of sodomy, which is as contrary to Divine precept as it is to chastity. And although the authority of the Holy Scriptures, and the censure of earthly laws, prohibit offences of this kind, it is nevertheless necessary to condemn them by a new decree; lest if timely correction be deferred, still greater vices may arise. Therefore, we establish by this law, that if any man whosoever, of any age, or race, whether he belongs to the clergy, or to the laity, should be convicted, by competent evidence, of the commission of the crime of sodomy, he shall, by order of the king, or of any judge, not only suffer emasculation, but also the penalty prescribed by ecclesiastical decree for such offences, and promulgated in the third year of our reign."

TITLE VI.—CONCERNING DIVORCE, AND THE SEPARATION OF PERSONS WHO HAVE BEEN BETROTHED.

I. Where a Woman, justly or unjustly, is Separated from her Husband.

"No one can legally marry a freewoman who has been repudiated by her husband, unless he knows that they have been divorced, either by written

shall be considered as designating per se a member of a religious order; and that, not what she has adopted for the combination of sin, but what the eye of every one perceive, is to be accepted as the sign of her religious profession. Any widow who, hereafter, attempts to assume particular vail in this way, shall not only be subject to the penalties of the law, but shall also undergo the punishment prescribed by the canons of the Church and shall not escape the justice of the King."

KEAVUS CHRISTIANISSIMUS, KING.

V. Concerning Federacy.

"That crime must not be unpunished which, in the violation of morality, has always been considered most execrable as therefore Incest, in cases of federacy, where their guilt has been proved after proper investigation by the judge, that both parties shall be excommunicated without delay, and be delivered up to the fiskop of the diocese where the deed was committed, to live in military confinement in a priest as that, against their will, they may expiate the crime which they are convicted of having voluntarily perpetrated."

"If, however, anyone should have been forced to commit this horrible offence, and it is proved to have done so unwillingly, he shall then not be liable to punishment, if the person who discovered the whole should be prevented as a witness; but he ought in it voluntarily shall undergo the full penalty. The children, or legitimate heirs of married men who have been found guilty of this crime, shall have their property and it shall be lawful for their wives, having received back their dowries, and totaling all their possessions, to afterwards marry whomsoever they will."

KEAVUS REGINA, KING.

VI. Concerning Sodomy, and the Manner in which the Law should be Enforced.

"The doctrine of the orthodox faith requires us to place our censure upon vicious practices, and to restrain those who are addicted to carnal offenses. For we counsel well for the benefit of our people and our country, when we take measure to utterly extirpate the crimes of wicked men, and put it out of the evil deeds of vice. For this reason we shall attempt to abolish the horrible crime of sodomy, which is so contrary to Divine precept as it is to chastity. And although the authority of the Holy Scriptures, and the censure of earthly laws, prohibit offenses of this kind, it is nevertheless necessary to conduct them by a new decree lest if timely correction be deferred, still greater vices may arise. Therefore, no establish by this law, that if any man whosoever, of any condition, whether he belongs to the clergy, or to the laity, should be convicted, by competent evidence, of the commission of the crime of sodomy, be punished by order of the King, or of any Judge, not only milder censure, but also the penalty prescribed by ecclesiastical decree for such offenses, and promulgated in the third year of our reign."

TITLE VI.---CONCERNING KINGSHIP, AND THE

QUALIFICATION OF THOSE WHO HAVE

HEIR RECKONING.

I. Where a Nearer, Lastly or Majority, is Separated from her Husband.

"No one can legally marry a freedwoman who has been repudiated by her husband, unless he knows that they have been divorced, either by written

evidence, or in the presence of witnesses. And if anyone should act otherwise, as soon as the governor of the city, or his deputy, or the judge of the district, shall become aware of the fact, where the parties are noble, and the judge is unable to imprison or separate them; he must straightway bring the affair to our attention, that they may receive the punishment which they deserve. But if they are persons of inferior rank, the judge shall immediately cause them to be separated. And the woman who, without the consent of her former husband, has married again, as well as the man who ventured to take her as a wife, shall be delivered up absolutely to her former husband, to be dealt with according to his pleasure. If, however, the case between the former husband and his wife has not yet been decided; or if her former husband has married another woman; or, indeed, if he has left his wife unjustly he shall lose the dowry which he gave her, and it shall absolutely belong to her, nor shall he be entitled to receive any of her property. If he should have sold, or fraudulently disposed of, any of the property of his wife, and judge shall compel him to make restitution. Where the woman, through fear of her husband, or deceived by any of his representations, should have made any written agreement concerning her property for his benefit, her agreement shall be null and void, and all the property which is disposed of shall be restored to her."

FLAVIUS CHINTASVINTUS, KING.

II. There shall be No Divorce between Married Persons.

"If the violation of the wife of another is a crime, how much more is she to be condemned who voluntarily commits this sin. For the reason that there are many reckless men who, either through ambition or desire, or induced by some fraud, and despising their own wives, seek those of others, we therefore decree by this law, which is to be perpetually observed; that no man, except for the manifest cause of fornication, shall at any time, leave his wife, nor shall he divorce himself from her, either in the presence of a witness, or by any instrument in writing, or under any pretext whatever. Where her husband is able to prove her guilty of adultery, the crime having been established by sufficient evidence, she shall be given up to him by the judge to be disposed of as he pleases; in accordance with the provisions of a former law. If, however, she should manifest a desire to enter a religious order, the priest shall ascertain the wishes of both of them, so that, afterwards, neither will be able to offer any excuse for their conduct, in case either should marry again. But if, under any other circumstances, a man, rejecting his wife, should fraudulently obtain from her a document in writing, relating to a separation, such document shall have no validity whatever, and the wife shall be entitled to recover the sum she received as a dowry; and if the unprincipled husband should have any property, it shall be given to their children. But if there should be no children by this marriage, or by a former one of the husband, the wife shall receive his entire property, in addition to her dowry, as aforesaid; and if she should be dead, her sons shall have the right to bring the matter before the court; so that, the crime being proved, the man may undergo the sentence of the law. All the children either by this marriage or by a preceding one of the husband, shall, as we have said, share equally in the property. But if the parties should have no children; and there should be none living of the first marriage of the husband; and it should appear that the woman has children by a previous marriage of her own; it shall be lawful for the latter to share in their mother's rights in this property; and, on their application, under the present law, they may obtain the entire possessions of the man who has been condemned. Where there are no children of the aforesaid persons, husband and wife, her nearest relatives shall be entitled to the inheritance of her property, providing they should have instituted proceedings leading to the conviction of the husband, for the sake of divorce, or for security of himself, extorts any

TIAVIRT CHINCHAYNONE, KING.

II. There shall be no divorce between married persons.

"If the violation of the wife of another is a crime, how much more is she to be condemned who voluntarily commits this sin. For the reason that there are many reckless men who, either through ambition or desire, or induced by mere fraud, and duplicity their own wives, seek those of others, we therefore decree by this law, which is to be perpetually observed, that no man, except for the sentence of formal divorce, shall in any way, leave his wife, nor shall he divorce himself from her, either at any time, or in the presence of a witness, or by any instrument in writing, or under any pretext whatever. Where her husband is able to prove her guilty of adultery, the crime having been established by sufficient evidence, she shall be given up to die by the judge to be disposed of as he pleases; in accordance with the provisions of a former law. If, however, she should manifest a desire to enter a religious order, the priest shall appertain the wishes of both, so that, afterwards, neither will be able to offer any excuse for their conduct. In case either should marry again, but if, under any other circumstances, a man, rejecting his wife, should fraudulently obtain from her a document in writing, relative to a separation, such documents shall have no validity whatever, and the wife shall be entitled to recover the sum she received as a dowry or if the marriage-portion should have any property, it shall be given to their children. But if there should be no children by this marriage, the wife shall receive her entire property, in addition to her dowry, as aforesaid and it she should be dead, her sons shall have the right to bring the matter before the court so that the crime being proved, the man may undergo the sentence of the law. All the children either by this marriage or by a preceding one of the husband, shall, as a rule, share equally in the property. But if the parties should have no children and there should be sons living of the first marriage of the husband; and it should happen that the woman have children by a previous marriage of her own; it shall be lawful for her children to share in their mother's rights in this property and, on their application, under the present law, they may obtain the entire possessions of the man who has been condemned. Where there are no children of the aforesaid persons, husband and wife, her nearest relatives shall be entitled to the inheritance of her property, providing they should have lawfully remaining living to the conclusion of the husband, for the sake of divorce, or for security of himself, retains any

instrument in writing from his wife, or, without doing this, having abandoned his wife, should marry another; he shall receive two hundred lashes in public, and shall be scalped, as a mark of degradation; or he may be condemned of perpetual exile, or be given as a slave to anyone whom the king may select. Any woman who, knowing at the time, as having discovered subsequently, that her husband has another wife living, shall make no objection to this; shall, at once, be given up to the former life of her husband; so that, with the exception of depriving her of life, she may have the privilege of disposing of her as she pleases. And if, even after the death of the first wife, this crime should be proved by her children, or, if there should be no children, by such heirs as have the rights to prosecute; the guilty woman shall be given into their power, to be disposed of in the same manner as the injured wife would have had a right to dispose of her, the infliction of death alone being expected. And, for the reason that women are accustomed very frequently to cause scandal by leaving their own husbands, on account of their attachment to kings and judges; therefore, we decree that if any woman either by the aid of the king, or through inducements held out to her by anyone else, should separate from her husband, or consent to marry another man; she shall be surrendered, with all her property, into the hands of her lawful husband, and shall be liable to the same penalty imposed upon the husband under similar circumstances, as hereinbefore stated, and her property shall be disposed of in a similar manner."

"Likewise, this same rule shall apply to men, where one shall presume to marry the wife or the betrothed of another; the following cases being expected: where the husband of the woman should have been found guilty of pederasty; or should have surrendered his wife to another man against her will; that such villiany ought always to be condemned by Christians, that man shall never be permitted to marry another woman, if he should desire to do so. Where the spurious marriage has actually taken place, the husband must be delivered up as a slave to someone, according to due process of law; and if the woman should be unwilling to longer live with her legal husband, she must afterwards live a chaste life; nor shall she be permitted to marry again until her aforesaid husband is dead."

FLAVIUS RECESVINTUS, KING.

III. There shall be No Separation between Persons who are Betrothed.

"We have elsewhere prescribed the same punishment for transgressions committed by persons of equal rank. Therefore, the provisions of a former law relating to the persons as well as property, of men and women who have been betrothed, shall be, and is, hereby confirmed; and if any person after the dowry has been given, or the marriage contract has been legally drawn up, in violation of his, or her, solemn obligations, should marry anyone else, without the consent of all parties; he, or she, shall be liable to all the penalties of a former law; and if it should appear that on account of sickness, rather than through fraud, such person is desirous of entering some religious order, he or she shall be permitted to do so, subject to the regulations of the above-mentioned former law."

## BOOK IV.

## CONCERNING NATURAL LINEAGE.

### TITLE I. CONCERNING THE DEGREES OF RELATIONSHIP.

I. The Nature of the First Degree.

"Likewise, this same rule shall apply to men, where one shall pre-
fuse to marry the wife or the betrothed of another the following cause
being expected: where the husband of the woman should have been found
guilty of perfidy or should have surrendered his wife to another man
against her will; that such villainy ought always to be expected, it
Christians, that man shall never be permitted to marry another woman, if
he should desire to do so. There the previous marriage be mutually taken
place, the husband must be delivered up as a slave to someone, according
to the practice of law; and it the woman should be unwilling to labour live
with her legal husband, she must afterwards live a chaste life; nor shall
she be permitted to marry again until her aforesaid husband is dead."

VIZAIUS REGNERI TUS, KING.

III. There shall be No Separation between Persons who are Betrothed.

"We have elsewhere prescribed the same punishment for transgressions committed by persons of equal rank. Therefore, the provisions of a former law relating to the persons as well as property, of men and women who have betrothed, shall be, and is, hereby confirmed; and it any person after the dowry has been given, or the marriage contract has been legally drawn up, in violation of this, or her, solemn obligations, should marry anyone else, without the consent of all parties he or she, shall be liable to all the penalties of a former law; and if it should appear that on account of slackness, rather than through fraud, such person is desirous of entering into some relations other, he or she shall be permitted to do so, subject to the regulations of the above-mentioned former law."

BOOK IV.

CONCERNING MARITAL LINEAGE.

TITLE I. CONCERNING THE INCREASE OF MATRIMO-

SHIP.

1. The Nature of the First Degree.

"In the first rank of the first degree are included the father and mother; in the second rank, the son and the daughter; but no other persons."

II. The Affinity of the Second Degree.

"In the second degree and the first rank, are included the grandfather and the grandmother; in the second, the grandson and the granddaughter; in the collateral line, the brother and the sister, which persons have a twofold origin, for the father and the mother are derived from both the grandfather and grandmother; the grandson and granddaughter, from both son and daughter; the brother and sister; from both father and mother. And likewise, the persons in the following degrees, in whatever relationship they stand to each other, are, in the same manner of twofold origin. Persons in the second degree are thus said to be of double derivation, because there are two grandparents, paternal and maternal; and two kinds of grandchildren, descended either from the son or from the daughter. The brother of the father, or the brother of the mother, who are called respectively the paternal or maternal uncles, belong to the collateral line, and they, in like manner, are of double origin."

ANCIENT LAW.

III. The Relationship of the Third Degree.

"The third degree includes, first the great-grandfather and the great-grandmother; second, the great-grandson and the great-granddaughter; in the collateral line, the son and the daughter of the brother and the sister; the paternal uncle and the paternal aunt, that is to say, the brother and the sister of the father; and the maternal uncle and the maternal aunt, that is to say, the brother and sister of the mother."

ANCIENT LAW.

IV. The Consanguinity of the Fourth Degree.

"In the fourth degree come first the great-great-grandfather and the great-great-grandmother, and then the son and daughter of a great-grandchild; in the collateral line, the grandson and granddaughter of the brother and the sister; then the cousins of both sexes, the sons and daughters of the paternal uncle, and the children of the maternal uncle and aunt; then other cousins, the children of the father's sister; and also cousins who are born of two sisters; and besides, the great-uncle and the great-aunt by the father's side; then the great-uncle and great-aunt by the mother's side. There is no necessity of explaining this any further than is here stated."

ANCIENT LAW.

V. The Origin of the Fifth Degree.

"The fifth degree includes, in the first place, the great-great-great-grandfather and the great-great-great-grandmother; secondly, the great-great-great-grandson and the great-great-great-granddaughter, and, in the collateral line, the great-grandsons and great-granddaughters of brothers and sisters; male and female cousins by the father's side, the sons and daughters of cousins by the father's side, and the children of great-uncles and aunts on both father's and mother's side. Next come the brothers and sisters of the paternal great-grandfather and the brothers and sisters of the maternal great-grandfather. The above-mentioned degrees of relationship we cannot define by other means or in other words, than those in which they are here set forth."

ANCIENT LAW.

VI. The Limits of the Sixth Degree.

...ious publishing company, Inc.

"In the first rank of the first degree are included the father and mother; in the second rank, the son and the daughter; but no other persons."

II. The Affinity of the Second Degree.

"In the second degree and the first rank, are included the grandfather and the grandmother; in the second, the grandson and the granddaughter; in the collateral line, the brother and the sister, which persons have a twofold origin, for the father and the mother are derived from both the grandfather and grandmother; the grandson and granddaughter, from both son and daughter; the brother and sister; from both father and mother. And likewise, the persons in the following degrees, in whatever relationship they stand to each other, are, in the same manner of twofold origin. Because in the second degree are that said to be of double derivation, because there are two grandparents, paternal and maternal; and two kinds of grandchildren, descended either from the son or from the daughter. The brother of the father, or the brother of the mother, who are called respectively the paternal or maternal uncle, belong to the collateral line, and they, in like manner, are of double origin."

ANCIENT LAW.

III. The Relationship of the Third Degree.

"The third degree includes, first the great-grandfather and the great-grandmother; second, the great-grandson and the great-granddaughter in the collateral line, the son and the daughter of the brother and the sister; the paternal uncle and the paternal aunt, that is to say, the brother and the sister of the father and the maternal uncle and the maternal aunt, that is to say, the brother and sister of the mother."

ANCIENT LAW.

IV. The Consanguinity of the Fourth Degree.

"In the fourth degree come first the great-great-grandfather and the great-great-grandmother, and then the son and daughter of a great-grandchild in the collateral line, the grandson and granddaughter of the brother and the sister; then the cousins of both sexes, the sons and daughters of the paternal uncle, and the children of the maternal uncle and aunt; then other cousins, the children of the father's sister and also cousins who are born of two sisters and brother, the great-uncle and the great-aunt by the mother's side, father's side; then the great-uncle and great-aunt by the mother's side. There is no necessity of explaining this any further than is here stated."

ANCIENT LAW.

V. The Origin of the Fifth Degree.

"The fifth degree includes, in the first place, the great-great-great-grandfather and the great-great-great-grandmother; secondly, the great-great-great-grandson and the great-great-great-granddaughter, and, in the collateral line, the great-grandson and great-granddaughters of brothers and sisters; male and female cousins by the father's side, the sons and daughters of cousins by the father's side, and the children of great-uncles and great-aunts on both father's and mother's side. Next come the brothers and sisters of the paternal great-grandfather and the brothers and sisters of the great-great-grandfather. The above-mentioned degrees of relationship are here set forth."

ANCIENT LAW.

VI. The Limits of the Sixth Degree.

"To the sixth degree belong, first, the great-great-great-great-grandfather and the great-great-great-great-grandmother; then the great-great-great-great-grandson and the great-great-great-great-granddaughter; next, in the collateral line, the son and the daughter of a great-grandchild of the sister; cousins on both sides of the house; paternal and maternal great-aunts, and the grandsons and granddaughters of paternal great-uncles and maternal great-aunts. To whom are added, in the collateral line, the children of the great-uncles and the great-aunts of both father and mother; that is to say, of the brother and the sister of the paternal great-great-grandfather, and the brother and sister of the maternal great-great-grandmother. No better explanation of this matter can be given than we have written above."

VII. The Persons in the Seventh Degree who are not Mentioned by the Laws.

"In the seventh degree those who are related in the direct line are not specifically designated by name; but the collateral line embraces the sons and daughters of great-grandchildren of brothers or sisters, and the sons and daughters of their cousins of both sexes. There exist, then, seven degrees of relationship, and no more, because, according to the nature of things, names could not be found for others, nor more heirs be begotten in the space of an ordinary lifetime."

## TITLE II. CONCERNING THE LAWS OF INHERITANCE.

I. Brothers and Sisters shall Share Equally in the Inheritance of their Parents.

"If the father or mother should die intestate, the sisters shall have the property equally with their brothers."

II. The Children shall Come First in the Order of Succession.

"If a man should die intestate, his children shall stand first in the order of succession; if there are no children, the inheritance shall descend to the grandchildren; if there are no grandchildren, then the great-grandchildren shall have a right to it; and if the decedent should leave neither children nor grandchildren, nor father nor mother, then his grandfather or grandmother, should either be living, may claim the inheritance of his estate."

## ANCIENT LAW.

III. Where there are no Heirs in the Direct Line, Collateral Heirs shall Inherit the Property.

"When any of the above-named persons of the first or second degree, in the direct line of succession, are not living, then collateral heirs shall be sought for to inherit the property of the man who died intestate. And such persons as are only distantly related can claim nothing while nearer heirs are still living."

IV. Who shall Succeed to the Property of Those who have left no Written Wills, or have made no Disposition of their Possessions in the Presence of Witnesses.

"In the case of those who die, and make no disposition of their property either by gift or by will, or do not declare their intentions on the presence of witnesses; their next of kin shall inherit from them."

V. Concerning Inheritance by Brothers and Sisters, and by such of these as are not descended from the same Parents.

To the sixth degree inclusive, that is, the great-great-great-great-grandparents and the great-great-great-great-grandchildren; then the great-great-great-great-uncles and the great-great-great-great-grandaunts; but, in the collateral line, the son and the daughter of a great-grandchild of the eldest cousins on both sides of the nearest paternal and maternal great-aunts, and the grandsons and granddaughters of paternal great-uncles and maternal great-aunts. In what are what, in the collateral line, the children of the great-uncles and the great-aunts of both father and mother that is to say, of the brother and sister of the paternal great-grandfather, father, and the brother and sister of the maternal great-grandmother. No better explanation of this matter can be given than as have written above."

VII. The Persons in the Seventh Degree who are not Mentioned by the Laws.

In the seventh degree those who are related in the direct line are not specifically designated by deed but the collateral line extends the sons and daughters of great-grandchildren of brothers or sisters, and the sons and daughters of their cousins of both sexes. There exist, then, seven degrees of relationship, and no more, because, according to the nature of things, none could not be found for others, nor more before mentioned in the degree of ordinary lineage."

TITLE II. CONCERNING THE LAWS OF INHERITANCE.

I. Brothers and Sisters shall Share Equally in the Inheritance of their Parents.

"If the father or mother should die intestate, the sisters shall have the property equally with their brothers."

II. The Children shall Come First in the Order of Succession.

"If a man should die intestate, his children shall stand first in the order of succession; if there are no children, the inheritance shall be to the grandchildren; if there are no grandchildren, the great-grandchildren shall have a right to it; and if the decedent should leave neither children nor grandchildren, nor father nor mother, then the grandfather or grandmother, should either be living, may claim the inheritance of his estate."

ANCIENT LAW.

III. Where there are no Heirs in the Direct Line, Collateral Heirs shall Inherit the Property.

"When any of the above-named persons of the first or second degree in the direct line of succession, are not living, then collateral heirs shall be sought for to inherit the property of the one who died intestate, and such persons as are only distantly related can claim nothing while nearer heirs are still living."

IV. The Wife shall Succeed to the Property of Those who have left no Written Will, or have made no Disposition of their Possessions in the Presence of Witnesses.

"In the case of those who die, and make no disposition of their property either by gift or by will, or do not declare their intentions on the presence of attesting witnesses, not of wife shall inherit five thousand;

V. Concerning Inheritance by Brothers and Sisters, and by Sons of those who are not descended from the same Parents.

"Where a man leaves only brothers and sisters, they shall inherit his property, share and share alike, provided they are all children of the same father and mother. But if some should be descended from a different father or mother from the others, the inheritance shall go to the brothers and sisters having the same father and mother as the decedent. Such children as are born of different parents, but of the same mother, shall inherit the property of the mother, share and share alike. Those also who are descended from different mothers, but the same father, shall share in a like manner."

VI. Where he who Dies leaves Grandfathers or Grandmothers.

"If anyone should leave a paternal grandfather and grandmother, his entire property shall descend to them. So also if he should leave a paternal grandfather and maternal grandmother, they shall inherit his estate equally; and the same disposition of it shall be made, if he should leave both a paternal and a maternal grandmother. This equitable division of his estate shall apply only to such portions of it as he has acquired by his own efforts; and whatever he may have inherited from his ancestors, or his parents, shall descend to the heirs of the latter in the direct line of succession."

VII. Where he who Dies leaves Aunts.

"Where the decedent dies intestate, and leaves only a paternal uncle and aunt, and a maternal uncle and aunt, they shall inherit the property in equal parts."

ANCIENT LAW.

VIII. Where he who Dies leaves Nephews.

"Where the decedent does not leave any brothers or sisters, but does leave nephews and nieces; if one of them should be the son of one brother, and the others the children of another brother or sister, the inheritance shall be divided among them, share and share alike."

IX. A Woman shall be entitled to a Share in an Entire Inheritance.

"A woman shall inherit, equally with her brothers, the property of their father or mother; of their grandparents, on the paternal and the maternal side, as well as of their brothers and sisters; and also any property which may be left by a paternal uncle, or a cousin, or a nephew, or a niece. For it is only just that those who are nearly related by blood, should enjoy the benefit of hereditary succession."

X. As a Woman has a Right to a Share of an Entire Inheritance, so he who is next in Succession shall Inherit the Remainder of the Property.

"Women shall share all property left by relatives on the maternal side, with those in the same degree of relationship, whether they be uncles, aunts, or cousins. For those should have the inheritance who are the most nearly related to the deceased."

ANCIENT LAW.

XI. Concerning the Inheritance of Husband and Wife, respectively.

"Husband and wife shall inherit from each other, respectively, when they leave no relatives nearer than the seventh degree."

XII. Concerning the Inheritance of Property from Clerks and Monks.

"Where a man leaves only brothers and sisters, they shall inherit his property, share and share alike, provided they are all children of the same father and mother. But if some should be issued from a different father or mother than the others, the inheritance shall go to the brothers and sisters having the same father and mother as the deceased. Such children are one tore of different parents, but of the same mother, shall inherit the property of the mother, share and share alike. Those also who are issued from different mothers, but the same father, shall share in a like manner."

VI. Where no kin Leave Grandfathers or Grandmothers.

"If anyone should leave a paternal grandfather and grandmother, his entire property shall descend to them. He also if he should leave a paternal and maternal grandfather, they shall inherit his estate equally and the same disposition of it shall be made. If he should leave both a paternal and a maternal grandmother. This decision applies to the estate shall apply only to such portions of it as he has acquired by his own efforts; but whatever he may have inherited from his ancestors, or his parents, shall descend to the heirs of the father in the direct line of succession."

VII. Where no One Else Leave Wants.

"Where the deceased also intestate, and leaves only a paternal uncle and aunt, and a maternal uncle and aunt, they shall inherit the property in equal parts."

ANCIENT LAW.

VIII. Where no One Else Leave Nephews.

"Where the deceased does not leave any brothers or sisters, but does leave nephews and nieces if one of them should be the son of one brother, and the others the children of another brother or sister, the inheritance should be divided among them, share and share alike."

IX. A Woman shall be entitled to a Share in Ancient Inheritance.

"A woman shall indeed, equally with her brothers, the property of their father or mother or their grandparents, or the paternal and the maternal uncles, as well as of their brothers and sisters and also any property which may accidentally a paternal uncle, or a cousin, or a kinsman, or a niece. For it is only just that these who are nearly related by blood, should enjoy the benefit of hereditary succession."

X. As a Woman may a Right to a Share of the Entire Inheritance, so may he who is next in Succession shall Inherit to Immediately on the Property.

"Sons shall share all property left by relatives on the maternal side, with those in the same degree of relationship, whether they be uncles, aunts, or cousins. For these should have the inheritance who are the most nearly related to the deceased."

ANCIENT LAW.

XI. Concerning the Inheritance of Maternal and Aunts, respectively.

"Brothers and sis shall inherit from each other, respectively, when they leave no relatives nearer than the seventh degree."

XII. Concerning the Inheritance of Property from Uncles and Aunts.

"The church to which they are attached shall inherit the property of all clerks, monks, and other persons in orders, who have left no heirs under the seventh degree, and who have made no disposition of their estate."

XIII. After the Death of their Mother, Children shall remain under the Control of their Father; and What Disposition he shall make of their Property.

"If the mother should die, the children shall remain under the control of the father. And, if she should die while her husband is still living and he should not marry again, he shall have charge of the children born of the marriage, and may retain possession of their property, with the understanding that he is not to sell, damage, or dispose of it in any way, but shall preserve it intact for the benefit of his children. But, in common with his children, he shall enjoy the income from said property, and shall be entitled to reserve from it all their necessary expenses. If, however, the father should marry again he shall not relinquish the care of the children, because it is not just that his authority over them having been abandoned, they should be placed under the guardianship of another; but he shall still retain control over them and their property, as hereinbefore mentioned. But he must at once draw up an inventory of their property in his own hand, in the presence of a judge, or of the heirs of his deceased wife; and he must also bind himself by a written obligation, that those relatives who are legally entitled to it shall have the guardianship of the children in the case of his death; in order that none of the property of the latter may be lost, but may be protected by him, in every way, from injury or diminution in value. If the father, after having married a second time, should refuse to act as guardian of his children, then the judge shall appoint the nearest relative of the mother to take charge of them as guardian. And if either his son or daughter should marry, they shall at once receive their portion of their mother's estate; excepting the third part, which he may reserve for himself, as authorized by law."

"The father, as soon as a son or daughter has reached the age of twenty years, shall give to them half of what they are entitled to from their mother's estate, provided that they should not have already married. The remaining half the father shall reserve for himself during his lifetime, and, after his death, it shall descend to his children. This same regulation shall apply also to grandchildren. When the father has alienated any of the aforesaid property, or has retained it beyond the time prescribed by law, everything belonging to his children by right of inheritance from their mother, shall be given to them, at once, by way of complete restitution."

ANCIENT LAW.

XIV. Where a Mother remains a Widow, she shall have an Equal Portion of the Inheritance with her Children; and How a Mother ought to Dispose of the Property of her Children.

"A mother, during her lifetime, or so long as she remains a widow, shall share equally with her children in the income derived from the estate of her deceased husband. But she cannot give away, or sell, or bestow upon any of her children her share of the aforesaid property. And if the children should become aware that their mother, either through negligence, or through hatred of them, was about to dispose of any of said property, they may, at once, make application to the governor of the city, or to the judge, in order that the latter may warn their mother not to alienate such property, and only to use the income of it. She, however, shall have the right to give to her children any or all of said income, and she can unquestionably dispose of any profits derived from the same. And if it should be proved that she has alienated any of her portion, full restitution must be made therefor after her death."

ateus publishing company inc

Les manuscrits numériques

"After the death of the mother, whatever she received from her husband shall be equally distributed among the children, because they must not be defrauded of their paternal inheritance. If the mother should marry again, from that very day the children can claim as their own that portion of their father's property which their mother received at his death."

XV. No Wife can lay Claim to what her Husband has Gained by the Labor of her Slaves.

"If the husband should acquire any property through the labor of his wife's slaves, or in any foreign enterprise, his wife shall have no right to such property, either during his lifetime, or after his death for a husband who has control of his wife, as stated in the law of the Holy Scriptures, shall also have full authority over her slaves; and everything which he has gained by the services of the latter, or by those of his own slaves, in any undertaking, shall belong to him absolutely. And if the said slaves, while they are engaged with their master in any expedition or enterprise, should commit any wrong, or do any injury, he who brought them with him shall be responsible for their conduct, and shall make restitution, should they be found guilty. It has thus very properly been determined that, as their master profits by their labors, he should also be responsible for any damage they may cause."

THE GLORIOUS FLAVIUS RESCESVINTUS, KING.

XVI. Concerning such Property as the Husband and Wife together have Accumulated during their Married Life.

"When persons of equal rank marry one another, and, while living together, either increase or waste their property, where one is more wealthy than the other; they shall share in common the gains and losses, in proportion to the amount which each one holds. If the value of their possessions is the same, neither has a right to assume superiority over the other. For, it is not unusual, where such property is equal in amount, for one party, in some way, to take advantage of the other. And if it should be evident that the possessions of one exceed those of the other in value, as above stated, there shall be an apportionment of it made, showing what either shall have the right to claim after the death of the other, and what either shall have a right to dispose of to his or her children, or to heirs, or in any other way, that may be desired. This provision shall apply to, and be observed in, all cases relating to the estates of both husbands and wives. The distribution and possession of other property concerning which an agreement is writing has been entered into by both parties, shall be held and enjoyed by them according to the terms of that written agreement. If the husband should acquire any property, either from strangers, or during any public expedition, or by the donation of the king, or of a patron, or of any of his friends, his children or his heirs shall have a right to claim it, and shall have absolute power to dispose of it as they wish. The same rule shall apply to women who have received gifts from any source."

XVII. In what way a Child may Inherit Property.

"Ambiguity frequently produces error where a reasonable explanation is not given to elucidate a fact that is doubtful. Many persons deny that a child dead in infancy can have, at any time, a right to inherit from its parents, and we desire now to put an end to such disputes. For the origin of nature is such, that he who is born uses the senses of sight and touch before anything else. Who, therefore, can inherit any earthly possessions who died almost before he was sensible to light? And in what way can he be the possessor of property for whose control he was not destined, and who has scarcely had the use of the elements of which he

"After the death of the mother, whatever she received from her husband shall be equally distributed among the children, because they must not be deprived of their paternal inheritance. If the mother should marry again, [illegible] that they the children can claim as their own that portion of their father's property which their mother received at his death."

XV. No wife can lay claim to what her husband has gained by the labor of her Slaves.

"If the husband should acquire any property through the labor of his wife's slaves, or in any [illegible] enterprise, his wife shall have no right to such property, either during his lifetime, or after his death for a husband who has control of his wife, as stated in the law of the Holy Scriptures, shall also have full authority over her slaves; and everything which is [illegible] gained by the services of the slaves, or by those of his own slaves, in any undertaking, shall belong to his proprietor, and if the said slaves, while they are engaged with their master in any expedition or enterprise, should meet any wrong, or do any injury, he who brought them with him shall be responsible for their conduct, and shall make restitution, should they be found guilty. It has thus properly been determined that, as their master profits by their labors, he should also be responsible for any damage they may cause."

XVI. Concerning such property as the Husband and Wife together have Accumulated during their Married Life.

"If persons of equal rank marry one another, and, while living together, either increase or waste their property, where one is more wealthy than the other; they shall share in common the gains and losses, in proportion to the amount which each one holds. If the value of their possessions is the same, neither has a right to assume superiority over the other. For, it is not unusual, where much property is equal in amount for one party, in some way, to take advantage of the other. And if it should be evident that the possessions of one exceed those of the other in value, as above stated, they shall be an approximate of it made, showing what either shall have the right to claim after the death of the other, and what either shall have a right to dispose of to his or her children, or to heirs, or in any other way that may be desired. This provision shall apply to, and be observed in, all cases relating to the relatives of both husband and wives. The distribution and possession of other property, concerning which an agreement is wanting has been entered into by both parties, shall be held and enjoyed by them according to the terms of that written agreement. If the husband should acquire any property, either from strangers, or during any public expedition, or by the donation of the King, or of a Queen, or of any of his friends, his children or his heirs shall have a right to claim it, and shall have absolute power to dispose of it as they wish. The same rule shall apply to women who have received gifts from any source."

XVII. In what way a Child may Inherit Property.

"Anybody frequently produces error where a reasonable explanation is not given to eliminate a fact that is doubtful. Many persons deny that a child dead in infancy can have, at any time, a right to inherit from its parents, and we desire now to put an end to such disputes. For the article of nature is such, that he who is born runs the course of life and touch before anything else. Who, therefore, can inherit any property before anything else? Inasmuch as was essential to light. And in what possessions he died almost before he was essential to light. And in what way can he be the possessor of property for whose control he was not [illegible], and who had scarcely had the use of the [illegible] of which he

was formed? And he who has hardly been blessed by the light of heaven; how can the unexpected inheritance of the world enrich him when suddenly removed by death? With what reason can he claim the rights of the living, who is more nearly associated with death than with life, and who thus quickly dying in the midst of light, has fallen back imto darkness? Therefore, that the inheritance of an infant may belong to its nearest relatives, and the fact that he was living be clearly proved; and as the child had a right to eternal life, so also that it may have a right to terrestrial life; we hereby decree that no child lived for the space of ten days after its birth, and shall have received the holy sacrament of baptism, so that the father or mother of the child who shall be entitled to its inheritance, may, before its death, prepare it for its entrance into heaven; and that while still living, it shall obtain the possessions of the earth with their transitory benefits. And thus, while heavenly possessions are provided for it, it shall also be permitted to acquire those of the earth; and although while dead, it cannot benefit by the things of earth, it can, at least, enjoy those of heaven."

FLAVIUS CHINTASVINTUS, KING.

XVIII. How the Parents of a Child can Inherit from Him.

"Where the father is dead and the son or daughter should have lived ten days or longer, should have been baptized, and then should die; whatever either would have inherited from the estate of his or her father, may be claimed by his or her mother. And, in like manner, if the mother should die, the father shall not be entitled to the share of the deceased child, unless he be able to prove that that child has lived ten days, or longer, and has been baptized. And if neither father nor mother in whom these rights are vested, should leave any children, the entire inheritance shall be divided among the other descendants; but they shall not have the power to give to each grandchild more than the third part of the aforesaid property. And if they should wish to give any of it to the Church, or to freedmen, or to any one else, they shall have the right to dispose of only the fifth part of it in this manner, as prescribed by a former law. But where neither children nor grandchildren, nor great-grandchildren should be living, they shall have the right to make such disposition of their property as they desire."

"If said parents should die intestate, then such other of their relatives as are next of kin shall be entitled to the aforesaid property. Thus, if after the death of a child, the father should inherit its estate, and should die intestate, the inheritance shall belong to those heirs who are entitled to it by law. In like manner, if the mother should inherit the estate of her deceased child, and should die intestate, all interest in that estate shall belong to her nearest heirs; on this condition, that the grandchildren of the son or daughter who died while their father and mother were living, shall inherit such a portion of the estate of their grandfather or grandmother as their own parents would have inherited had they been living. But if a son having a wife and children should die during the life of his father, before his father has given him all that he was entitled to from his estate, and his sons should also die during the life of their grandfather, the daughter-in-law shall receive only so much as the father had formerly set aside for her husband. Nor can the widow claim any more than this from her father-in-law or any of his relatives. But if the son had been living with the father, and had not yet received anything from him; the son's widow shall then only be entitled to what she obtained as a dowry at the time of her marriage. Where the son, in obedience to his father's wishes, permitted the latter to retain what he was entitled to from his mother's estate, and should bequeath it at his death to his wife, or to anyone else; such bequests for the benefit of the wife or of others, if made in writing, shall be valid: provided his mother did not have other sons by the same husband. If, however, other sons should be living, the provisions of the former law must be carried out."

FLAVIUS CRISPUS SUIVANT, KING.

XVIII. How the Parents of a Child can Inherit from Him.

"Where the father is dead and the son or daughter should have lived ten days or longer, should have been baptized, and then should die whether either would have inherited from the estate of his or her father, may be claimed by his or her mother. And, in like manner, if the mother should die, the father shall not be entitled to the share of the deceased child, unless he is able to prove that that child has lived ten days, or longer, and has been baptized. And if neither father nor mother in whom those rights are vested, should leave any children, the entire inheritance shall be divided among the other descendants; but they shall not have the power to give to each grandchild more than the third part of the aforesaid property. And if they should wish to give any of it to the Church, or to freedmen, or to any one else, they shall have the right to dispose of only the fifth part of it in this manner, as prescribed by a former law. But where neither children nor grandchildren, nor grandchildren should be living, they shall have the right to make such disposition of their property as they desire."

"If said parents should die intestate, then each other of their relatives as are next of kin shall be entitled to the aforesaid property. Then, if after the death of a child, the father should inherit its estate, and should die intestate, the inheritance shall belong to those heirs who are entitled to it by law. In like manner, if the mother should die intestate, the inheritance shall belong to those heirs who are entitled to it by law. In like manner, if the mother should die intestate, the inheritance shall belong to her nearest in that estate shall belong to her nearest of kin, and should die intestate, all inherent the grandchildren of the son or daughter who died while their father and mother were living, shall inherit such a portion of the estate of their grandfather or grandmother as their own parents would have inherited had they been living. But if a son having a wife and children should die during the life of his father, before his father has given his all that he was entitled to from his estate, and his sons should also die during the life of their grandfather, the daughter-in-law shall receive only so much as the father had formerly set aside for her husband. Nor can the widow claim any more than this from her father-in-law or any of his relatives, but if the son had been living with the father, and had not yet received anything from him the son's widow shall then only be entitled to what she obtained as a dowry at the time of her marriage. Where the son, in obedience to his father's wishes, permitted the latter to retain what he was entitled to from his mother's estate, and should bequeath it at his death to his wife, or to anyone else; such bequests for the benefit of the wife or of others, if made in writing, shall be valid; provided his mother did not have other sons by the same husband. If, however, other sons should be living, the provisions of the former law must be carried out."

FLAVIUS CHINTASVINTUS, KING.

XIX. Concerning Posthumous Children.

"We fulfil the injunctions of the Divine Law when we provide for those who are yet unborn. Therefore, when a man cut off by death, leaves his wife pregnant, we decree that the child who is born afterwards shall share equally with those who are already born. But if he should leave no issue, and should bequeath his property to any person, the latter shall only be entitled to receive the fourth part of it. The three remaining parts shall descend, without question, to the posthumous child. Where a husband and wife before they have children, enter into a written agreement, mutually bestowing their property upon one another, and, afterwards, should have children; such as disposition of property, if their children are living, shall be void; and the children may take and hold the entire property of their parents, with the exception of the fifth part, which the parents shall have the right to dispose of otherwise. But if one of them, that is to say, either the husband or wife, before the marriage was consummated, should be proved to have made for the benefit of the other a written agreement disposing of property, it shall remain in full force; and such donation cannot, in any way, be overthrown by children subsequently born of their marriage."

THE GLORIOUS FLAVIUS CHINTASVINTUS, KING.

XX. He who leaves no Children, has full Power to Dispose of his Property as he Pleases.

"Every freeborn man and woman, whether belonging to the nobility, or of inferior rank, who has no children, grandchildren, or great-grandchildren, has the unquestionable right to dispose of his or her estate at will; nor can any arrangement that either may make, be set aside by any relatives of theirs belonging either to the direct or to the collateral line. For those belonging to degrees of relationship other than the above, in the direct line, cannot, in the order of nature, receive the inheritance. Such relatives can, however, inherit from the intestate in accordance with the law which defines their rights."

TITLE III. CONCERNING WARDS AND THEIR GUARDIANS.

FLAVIUS CHINTASVINTUS, KING.

I. What a Minor Is.

"It is a part of the practice of the duties prescribed by law, to so care for the rights of minors that they shall suffer no loss of their inheritance. Up to this time, little children left by a father have been called minors, for the reason that the mother has not less responsibility and care, on their account, than when both parents were living; and therefore we now decree, that henceforth any children left by father or mother, and who have not yet attained the age of fifteen years, shall be designated minors."

III. How the Guardianship of Wards shall be Entered upon; what Portion of their Property they shall Receive, and what Portion shall be Given to their Guardians.

"After the death of the father, the mother shall have the guardianship of the minor children, if she should wish it, provided she remains a widow; and she shall make an inventory of the property to which the children are entitled, by means of which their rights to their inheritance

PLAYING ORIENTATIONS, ETC.

XIX. Concerning Posthumous Children.

"To fulfil the intentions of the Divine Law when we provide for those who are yet unborn. Therefore, when a man cut off by death leaves his wife pregnant, we decree that the child who is born afterwards shall share equally with those who are already born. But if he should leave no issue, and should bequeath his property to any person, the latter shall only be entitled to receive the fourth part of it. The three remaining parts shall descend, without question, to the posthumous child. Where a husband and wife before they have children, enter into a written agreement, mutually bestowing their property upon one another, and afterwards should have children, such agreement shall be void and the children may take and hold the entire property of their parents, with the exception of the fifth part, which the parents shall have the right to dispose of otherwise. But if one of them, that is to say, either the husband or wife, before the marriage was consummated, should be proved to have made for the benefit of the other a written agreement disposing of property, it shall remain in full force and such donation cannot, in any way, be overthrown by children subsequently born of their marriage."

THE SCHISMS PLAYING ORIENTATIONS, ETC.

XX. He who leaves no Children, has Full Power to Dispose of his Property as he Pleases.

"Every freedom can and ought, whether relegated to the nobility, or of inferior rank, who has no children, friendship, or even gratitude, to dispose of his property or will as he has the undoubtable right to dispose of his or her estate at will for one may arrangement that either may make, be set aside by any relatives of theirs relegating either to the direct or to the collateral line. For those relegating to degrees of relationship other than the above, to the direct line, cannot, in the order of nature, receive the inheritance. Such relatives can, however, inherit from the intestate in accordance with the law which defines their rights."

TITLE III. CONCERNING MARIS AND THEIR QUALI-

CLASS.

PLAYING ORIENTATIONS, ETC.

I. What a Minor Is.

"It is a part of the practice of the nation prescribed by law, to ensure for the rights of minors that they shall suffer no loss of their inheritance. Up to this time little children left by a father have been called minors, for the reason that the mother has not been responsible and guardian, on their account, then when both parents were living and there- fore we can declare, that Demosthenes may children left by father or mother, and the have not yet attained the age of fifteen years, shall be designated minors."

III. How the Guardianship of Maris shall be Entered upon; what Portion of their Property they shall Receive, and what Portion shall be Given to their Guardians.

"After the death of the father, the mother shall have the guardian- ship of the minor children, if she should wish it, provided she remains a widow; and she shall make an inventory of the property in which the children are entitled, by means of which their rights to their inheritance

may be established. But if the mother should marry again, anyone of the sons who has attained his majority, that is, who has reached the age of twenty years, may assume the guardianship of his younger brothers: and shall see that their property is not alienated, or dissipated through neglect, by themselves, or by anyone else. But, in case he himself should use it up, or sell it, or give it away, or permit it to be lost through his own negligence: as soon as his brothers shall have become of age, he shall be compelled to make restitution out of his own share, of whatever was wasted by him. He shall, however, be allowed the tenth part of the income for the purpose of living, to the end that he may not burden with extravagant expenses what should be reserved for the minor heirs. Where he spends his own money, or uses his own property for the necessaries and business of all, and this fact is brought to the attention of the judge, he shall be reimbursed for his expenditures out of the entire estate left by his father. If any of the brothers should not be of lawful age, or of proper character to undertake the guardianship of orphans, a paternal uncle or a cousin may assume this duty; and if neither the paternal uncle nor his son should be found worthy, then a guardian shall be selected by the other relatives in the presence of the judge."

"Where neither the mother, nor anyone else, assumes the guardianship, an inventory of all the property which the father left shall be drawn up and signed by her and by witnesses, from the number of three to five, and shall be placed in the keeping of any bishop or priests whom the relatives may select, to be delivered to the children when they have attained their majority."

"It is also hereby provided that if any suits are brought against minors, their guardian, should he desire it, has a right to defend such actions. If, however, he should neglect to do so, a judgment shall be rendered by the court in favor of the plaintiff, without prejudice to the rights of the minors to have the matters reviewed, when they shall become of lawful age. If the party who made the claim should lose his case when the minor has reached his majority, he shall be compelled to restore to the minor, or to his relatives, or to anyone who may have a right to it, whatever property he obtained under the judgment aforesaid, along with any income it may have produced, and any profits which may have accrued from its possession; and he shall be compelled to pay ten solidi in addition, because he has prosecuted a claim which was not valid in law. Where a guardian desires to defend any action brought against his ward in court he shall have full authority to do so; but if the rights of the ward should be affected, or his property impaired or lost through his neglect, the guardian shall afterwards be compelled to make restitution."

THE GLORIOUS FLAVIUS RECESVINTUS, KING.

IV. Guardians shall have no Right to Exact from Wards in their Charge any Instruments in Writing whatever.

"As minors are unable to care for themselves or their property, it has been wisely provided by the laws that they should be subjected to the authority of guardians, and that their business should be transacted for them for a stated number of years. For the reason, however, that certain guardians, by means of either persuasion or threats, defraud those whose interests it is their duty to carefully protect, and compel them to enter into agreements that they will not demand an accounting of their property, or exact bonds or other written instruments from their wards, by means of which they seek to prevent inquiry into their actions: therefore, that our solicitude for the rights of such wards may the better appear in all matters where such rights are involved, we hereby decree that the following law must be strictly observed, to wit: that in the case of such wards, even when they have passed the age of

THE GLORIOUS PLAVIUS EDGEWINDER, KING.

IV. Guardians shall have no Right to Exact from Wards in their Charge any Instrument in Writing whatever.

"As above are unable to cure for themselves or their property, it but seem wisely provided by the laws that they should be subjected to the authority of guardians, and that their business should be transacted for them for a stated number of years. For the reason, however, that certain guardians, by means of either persuasion or threats, befriend those whose interests it is their duty to carefully protect, and compel them to enter into agreements that they will not demand an account of their acts, or, at most books or other written instruments from their wards, by means of which they seek to prevent inquiry into their actions; therefore, this our ordinance for the rights of such wards may the better appear in all matters where such rights are involved, we hereby decree that the following law must be strictly observed, to wit: that in the case of such wards, when they have passed the age of

say be established. But if the mother should marry again, anyone of the land who has attained his majority, that is, who has reached the age of twenty years, may assume the guardianship of his younger brothers and shall see that their property be not alienated, or dissipated through neglect, by themselves, or by anyone else. But, in case he himself should use it up, or sell it, or give it away, or permit it to be lost through his own negligence, as soon as his brothers shall have become of age, he shall be compelled to make restitution out of his own share of whatever may wasted by him. He shall, however, be allowed the tenth part of the income for the purpose of living, to the end that he may not burden with extravagant expenses what should be reserved for the minor heirs. Where by wards his own money, or uses his own property for the assistance and defense of all, and this fact is brought to the attention of the judge, he shall be indemnified for his expenditure out of the entire estate left by his father. If any of the brothers should not be of lawful age, or of proper character to undertake the guardianship of orphans, a paternal uncle or a cousin may assume this duty and if neither the paternal uncle nor his son should be found worthy, then a guardian shall be selected by the other relatives in the presence of the judge."

"Where neither the mother, nor anyone else, assumes the guardianship, or incapacity of all the property which the father left shall be given up and placed by order and by witnesses, from the number of three to five, and shall be placed in the keeping of any bishop or priests who the relatives may select, to be delivered to the children when they have attained their majority."

"It is also hereby provided that if any suits are brought against minors, their guardian, should he desire it, has a right to defend such suits in court, he should neglect to do so, a judgment shall be rendered by the court in favor of the plaintiff, without prejudice to the rights of the minor to have the matter reviewed, when they shall become of lawful age. If the party who made the claim should lose his case when the minor has reached his majority, he shall be compelled to restore to the minor, or to his relatives, or to anyone who may have a right to it, whatever property he obtained under the judgment aforesaid, along with any income it may have produced, and any profits which may have accrued from its possessions and he shall be compelled to pay the costs of the suit. Moreover he has prosecuted a claim which was not valid in addition, because he has prosecuted a claim which was not valid in law. Where a guardian refuses to defend any action brought against his ward in court he shall have full authority to do so; but if the rights of the ward should be affected, or his property impaired or lost through his neglect, the guardian shall afterwards be compelled to make restitution."

fourteen years, where the guardian or guardians who had charge of their persons and property shall be found to have caused the execution of any bond or written instrument of any description, which enures to the benefit of said guardians or any person designated by them, then such bond or instrument shall be void, and of no force whatever in law."

"When the time shall come that he who has been under guardianship shall have the right to assume the management of his own affairs, the guardian shall give a complete account of the care of his ward's property, in the presence of a priest or a judge, and shall receive from his former ward a full discharge from all obligations; so that, all restraint being removed, the said ward may come into full possession of his property, and have the right to dispose of it at his pleasure. But if it should happen that, while the guardianship is in force, the ward should be attacked by a dangerous illness, and should wish to dispose of his property by will, he can do so, provided he has completed his tenth year, according to the provisions of a former law."

"If the guardian, while living or dying, should give any of the property belonging to his ward to his own children, or to any persons whomsoever, and no account of the same was made to the wards, according to the terms of the inventory which was made at the time the guardianship was accepted, and proof of this should be legally established, those who received said property from the guardian shall make full restitution to the wards. All wards shall have the benefit of this legal remedy, except where, by the lapse of time, and having passed the age of fifteen years, their rights shall be extinguished by law."

## TITLE IV.—CONCERNING FOUNDLINGS.

I. Where Anyone Casts Away, or Abandons, a Freeborn Child, he shall Serve as its Slave.

"If anyone, induced by compassion, should rescue, and care for a child, of either sex, who has been abandoned, and such child, after having been brought up, should be acknowledged by its parents; where the latter are freeborn persons, they shall either give a slave, or the price of one, as compensation for the service performed. If they should neglect to do this, compensation shall be made by order of the judge, of the district; and the parents who have been guilty of such wickedness shall be condemned to perpetual exile. Where he who casts away the child has not sufficient property to redeem it, he shall serve as its slave; and he whom the pity of others has preserved, shall enjoy complete freedom. It shall be lawful for the judge both to prosecute and impose sentence for this crime whenever committed."

II. Where any Male or Female Slave shall be Proved to have Cast Away a Child, with or without the Knowledge of his or her Master.

"If a slave, of either sex, in order to defraud his or her master, should expose and abandon their own child, without the knowledge of said master, and anyone should bring it up, the latter shall be entitled to receive the third part of its value; but, under such circumstances, the master must swear or prove that he was ignorant that his slave had abandoned the child. If, however, it should be shown that the master was aware of the fact, the child shall become the slave of him who reared it."

III. What Compensation for Support anyone shall Receive for the Bringing up a Child committed to his Care by its Parents.

"If anyone should accept from its parents a little child to be reared, he shall receive as compensation one solidus every year, until the child has reached the age of ten; but he shall be entitled to no further compensation after it has completed its tenth year, because after that time

andronicus publi

fourteen years, where the guardian or guardians who had charge of their persons and property shall be found to have caused the execution of any bond or written instrument of any description, which enures to the benefit of said guardians or any person designated by them, then such bond or instrument shall be void, and of no force whatever in law."

"When the time shall come that he who has been under guardianship shall have the right to assume the management of his own affairs, the guardian shall give a complete account of the care of his ward's property, in the presence of a priest or a judge, and shall receive from his former ward a full discharge from all obligations; so that, all restraint being removed, the said ward may come into full possession of his property, and have the right to dispose of it at his pleasure. But if it should happen that, while the guardianship is in force, the ward should be attacked by a dangerous illness, and should wish to dispose of his property by will, he can do so, provided he has completed his tenth year, according to the provisions of a former law."

"If the guardian, while living or dying, should give any of the property belonging to his ward to his own children, or to any persons whomsoever, and no account of the same was made to the wards, according to the terms of the inventory which was made at the time the guardianship was accepted, and proof of this should be legally established, those who received said property from the guardian shall make full restitution to the wards. All wards shall have the benefit of this legal remedy, except where, by the lapse of time, and having passed the age of fifteen years, their rights shall be extinguished by law."

## TITLE IV.—CONCERNING FOUNDLINGS.

I. Where Anyone Casts Away, or Abandons, a Freeborn Child, he shall Serve as its Slave.

"If anyone, induced by compassion, should rescue, and care for a child, of either sex, who has been abandoned, and such child, after having been brought up, should be acknowledged by its parents; where the latter are freeborn persons, they shall either give a slave, or the price of one, as compensation for the service performed. If they should neglect to do this, compensation shall be made by order of the judge, of the district; and the parents who have been guilty of such wickedness shall be condemned to perpetual exile. Where he who casts away the child has not sufficient property to redeem it, he shall serve as its slave; and he whom the pity of others has preserved, shall enjoy complete freedom. It shall be lawful for the judge both to prosecute and impose sentence for this crime whenever committed."

II. Where any Male or Female Slave shall be Proved to have Cast Away a Child, with or without the Knowledge of his or her Master.

"If a slave, of either sex, in order to defraud his or her master, should expose and abandon their own child, without the knowledge of said master, and anyone should bring it up, the latter shall be entitled to receive the third part of its value; but, under such circumstances, the master must swear or prove that he was ignorant that his slave had abandoned the child. If, however, it should be shown that the master was aware of the fact, the child shall become the slave of him who reared it."

III. What Compensation for Support anyone shall Receive for the Bringing up a Child committed to his Care by its Parents.

"If anyone should accept from its parents a little child to be reared, he shall receive as compensation one solidus every year, until the child has reached the age of ten; but he shall be entitled to no further compensation after it has completed its tenth year, because after that time

us publishing company, inc.

fourteen years, where the guardian or guardians who had charge of their
person and property shall be found to have caused the execution of any
of said guardians or any person designated by them, that such tool or in-
strument shall be void, and of no force whatever in law."

"When the time shall come that he who has been under guardianship
shall have the right to assume the management of his own affairs, the
guardian shall give a complete account of the care of his ward's property,
in the presence of a priest or a judge, and shall receive from his former
ward a full discharge from all obligations so that, all restraint being
removed, the said ward may come into full possession of his property, and
have the right to dispose of it at his pleasure. But if it should happen
that, while the guardianship is in force, the ward should be attacked by
a dangerous illness, and should wish to dispose of his property by will,
he can do so, provided he has completed his tenth year, according to the
provisions of a former law."

"If the guardian, while living or dying, should give any of the
property belonging to his ward to his own children, or to any persons whom-
soever, and no account of the same was made to the ward, according to the
terms of the inventory which was made at the time the guardianship was ac-
cepted, and proof of this should be legally established, those who received
said property from the guardian shall make full restitution to the ward.
All wards shall have the benefit of this legal remedy, except wards, by the
lapse of time, and persons under the age of fifteen years, their rights
shall be established by law."

TITLE IV.—CONCERNING MINORS.

I. Where Persons Under Age, or Servants, Should Commit Crime, he shall
Serve as its Slave.

"If anyone, induced by commission, should rescue, and save for a child,
or either sex, who has been abandoned, and such child, after having been
brought up, should be acknowledged by its parents where the latter are
freeborn persons, they shall either give a slave, or the price of one, as
compensation for the service performed. If they should neglect to do this,
compensation will be made by order of the judge, of the district and the
persons who have been guilty of such wickedness shall be condemned to
perpetual exile. Where he who casts away the child has not sufficient prop-
erty to redeem it, he shall serve as its slave and be when the pity of
others has preserved, shall enjoy complete freedom. It shall be lawful for
the judge both to prosecute and impose sentence for this crime whenever
committed."

II. Where any Male or Female Slave, shall be Proved to have Cast Away
a Child, with or without the Knowledge of his or her Master.

"If a slave, of either sex, in order to deprive his or her master,
should expose and abandon their own child, without the knowledge of said
master, and anyone should bring it up, the latter shall be entitled to re-
ceive the third part of its value; but, under such circumstances, the
master must accept or prove that he was ignorant that his slave had abandoned
the child. If, however, it should be shown that the master was aware of
the fact, the child shall become the slave of him who raised it."

III. What Compensation for Support anyone shall Receive for the
Infant up a Child committed to his Care by its Parents.

"If anyone should accept from its parents a little child to be reared,
he shall receive as compensation one solidus every year, until the child
has reached the age of four but he shall be entitled to no further com-
pensation after it has completed its tenth year, because after that time

the services of the child should be sufficient to pay for its support. And if he who seeks to take the child again should be unwilling to pay this sum, it shall be held in slavery by him who reared it."

## TITLE V. CONCERNING SUCH PROPERTY AS IS VESTED BY THE LAWS OF NATURE.

I. Concerning the Disinheriting of Children; and What Disposition Parents should make of their Property.

"As soon as we have ascertained that any unlawful acts have been committed, it behooves us to prevent, by legal measures, similar occurrences in the future. For many persons living reckless lives, squander their property upon strangers, either on account of riotous living, or through the unwise counsel of others, and, as a result of this, leave their inoffensive children or grandchildren weak and penniless; for those cannot be of any benefit whatever to the community upon whom the duty of labor has not been enjoined by the example and virtues of their parents. And, in order that, under such circumstances, the rights of the community may not be sacrificed, or children or grandchildren be deprived of the benefits of that natural affection which should be bestowed upon them, the law, by which a father or mother, or grandfather or grandmother have the right to give their property to a stranger, should they wish to do so, or a woman to dispose of her dowry in any way that she pleases, is hereby abrogated; and we decree that the following more equitable law shall be observed by all, to wit: that neither parents nor grandparents shall have the absolute right to dispose of all their property, nor that children nor grandchildren shall, through an unjust will, be deprived of the inheritance of their parents and grandparents; therefore, any father or mother, grandfather or grandmother, who wish to bestow any of their property upon their children or grandchildren, may observe the following rule, viz: that in the bestowal of said gifts upon their children or grandchildren they do not exceed the third part of their property; nor shall it be lawful for them to transfer any of their property to any stranger, unless they should not have any legitimate children or grandchildren living."

"The following, however, we decree shall be observed, as being in accordance with the dictates of reason: that if the father or mother, grandfather or grandmother, should decide to bequeath, by any instrument in writing, any portion of the third part of their property as aforesaid, to their children or grandchildren, in compliance with the laws governing inheritances, all such proceedings shall be forever inviolable; and whatever bequest concerning said property may be made, shall have full and uncontrovertible validity. Nor shall it be lawful for the child or grandchild who has received any of the said third part of the estate from their parents, to claim anything more, unless they should prove to be entitled to it by some former bequest of their parents or grandparents."

"If those having children or grandchildren, should wish to bestow anything upon the Church, or upon freedmen, or upon anyone else, they shall have the right to dispose of the fifth part of what remains, after the said third part has been reserved. The authority of such persons to dispose of the said fifth part is indubitable; but, in such cases, either the third part of the property which is to be bequeathed to the children, or the fifth part which is to be otherwise disposed of, as aforesaid, must be separated from the remaining property, and a proper estimate made of the same. But whatever anyone has received through the generosity of the king, shall, under circumstances, be included in the estimate of either the third or the fifth parts of the estate aforesaid; for, according to another law, whatever anyone has acquired through the royal county shall be absolutely at his disposal."

"It has been already provided that children and grandchildren cannot be disinherited by their parents for any trifling offence. The grandfather and grandmother, as well as the father and mother, shall have the right to chastise and restrain their children and grandchildren, as long as they remain members of the family. And if a son or daughter, grandson or granddaughter, should attempt to inflict any serious injury upon their parents or grandparents; that is to say, if he or she should give any of them a blow with the fist; or a kick; or strike them with a stone, or with a scourge, or with a whip; or should insolently seize any of them by the foot, or by the hair, or even by the hand; or be guilty of any shameless assault upon them; or should publicly accuse them of crime; then, any child or grandchild convicted of such an offence, shall receive fifty lashes with the scourge, in the presence of the judge, and shall forfeit all claim to the inheritance of its grandparents or parents, should the latter so desire. But if, repenting of its conduct, it should implore the pardon of those whom it has offended; and, through the love of its parents, it should be again received into favor, and designated as an heir; it shall not be deprived of its inheritance, or be accounted infamous, on account of the punishment which it has received."

FLAVIUS CHINTASVINTUS, KING.

II. What Part of her Dowry a Woman has a Right to Bequeath.

"For the reason that many women to whom the privilege was granted of disposing of their dowries as they pleased, have been found to have bestowed them upon persons with whom they were living illegally, to the injury of their children or grandchildren; therefore, we declare it to be both necessary and proper that those for the rearing of whom the marriage was celebrated, should receive some benefits from said property. In pursuance whereof we decree that, if any woman has children or grandchildren, and should wish to bestow a gift upon the Church, or upon freedmen, or upon any other person or persons; she shall not have the right to dispose of more than the fourth part of her dowry in this manner. Three fourths of it shall be left, without question, to her children or grandchildren, whether there be one, or many of them. On the other hand, a wife shall have full power to dispose of her entire dowry, in any way she pleases, when she leaves no legitimate children or grandchildren. Nevertheless, it shall not be lawful for any woman who has married two husbands, or more, to give the dowry she has received from one husband, to the children or grandchildren of another; but the children and grandchildren born in a certain line of descent shall, after the death of their mother, have the entire dowry given by their father or grandfather."

FLAVIUS CHINTASVINTUS, KING.

III. What Property Parents should Bestow upon their Children, at the Time of their Marriage.

"Whenever wrong is done by parents to the interests of their children it must be remedied by law. Therefore, because the duplicity of parents sometimes prompts them to deprive their children of what they have given them at the time of their marriage, we hereby declare such acts to be void; and decree that the following law shall hereafter be observed forever, to wit: that if any property should be transferred to any person, either by writing, or in the presence of witnesses, at the time of his or her marriage, excepting such as is usually given in the way of ornaments of clothes, as a marriage gift, whether said property consists of slaves, lands, vineyards, buildings, clothing, or jewels, presented by the parents to the children, either at the time of the marriage, or after it, the said children shall have full power to dispose of such property as they wish, with this exception: that, after the death of their parents, the inheritance shall belong to the children exclusive of what said parents have previously

"It has been already provided that children and grandchildren cannot be disinherited by their parents for any trifling offence. The stepfather and grandmother, as well as the father and mother, shall have the right to chastise and restrain their children and grandchildren, as long as they remain members of the family. And if a son or daughter, grandson or granddaughter, should attempt to inflict any serious injury upon their parents or grandparents, that is to say, if he or she should give any of them a blow with the fist or a kick or strike them with a stone, or with a scourge, or with a staff or should insolently seize any of them by the foot, or by the hair, or even by the hand or be guilty of any shameless assault upon them, or should publicly accuse them of crimes other than, any child or grandchild convicted of such an offence, shall receive fifty lashes with the scourge, in the presence of the judge, and shall forfeit all claim to the inheritance of its grandparents or parents, should the latter so desire, for its corporeal punishment of its conduct, it should implore the pardon of those whom it has offended; and, through the love of the parents, it shall be right that it should be received into favor, and designated as an heir; it shall not be deprived of its inheritance, or be accounted infamous, on account of the punishment which it has received."

FLAVIUS CONSTANTINUS, KING.

II. What part of her dowry a woman has a Right to Reclaim.

"For the reason that many women to whom the privileges was granted of disposing of their dowries as they pleased, have been found to have bestowed them upon persons with whom they were living illegally, to the injury of their children or grandchildren; therefore, we declare it to be right that those who, after the rearing of whom the marriage was celebrated, should receive some benefits from said property. In pursuance whereof we decree that, if any woman has children or grandchildren, and should wish to bestow a gift upon the Church, or upon freedmen, or upon any other persons or persons she shall not have the right to dispose of more than the fourth part of her dowry in this manner. Three fourths of it shall be left, without question, to her children or grandchildren, whether there be one, or many of them. On the other hand a wife shall have full power to dispose of her entire dowry, in any way she pleases, when she leaves no lineal male children or grandchildren. Nevertheless, it shall not be lawful for any woman who has married two husbands, or more, to give the dowry she has received from one husband, remainder, or more, to any of the children or grandchildren of another; but the children and grandchildren of a certain line of descent shall, after the death of their mother, have the entire dowry given by their father or grandfather."

FLAVIUS CONSTANTINUS, KING.

III. What Property Parents should Bestow upon their Children, at the Time of their Marriage.

"Whenever a gift is done by parents to the interests of their children it must be revoked by law. Therefore, because the liability of parents sometimes requires them to deprive their children of what they have given them at the time of their marriage, we hereby declare such acts to be void and decree that the following law shall hereafter be observed forever, to wit: that if any property should be transferred to any person, either by writing, or in the presence of witnesses, at the time of his or her marriage, excepting such as is usually given in the way of ornaments of clothes, as a marriage gift, whether said property consists of slaves, lands, vineyards, buildings, clothing, or jewels, presented by the parents to the children, either at the time of the said marriage, or after it, the said children shall have full power to dispose of such property as they wish, with this exception: that, after the death of their parents, the inheritance shall belong to the children or grandchildren of what said parents have previously

given to them according to law, and an equal distribution of said inheritance shall be made among the heirs; so that a son or daughter shall have full power to dispose of what they receive from their parents at the time of their marriage, according to the provisions aforesaid."

"After the death of the parents, an inventory shall be made, and the property which was donated at the time of the marriage shall be appraised, and the other heirs shall receive an equivalent in value to the amount of said property; and all shall then share equally in the remainder of the estate of the parents."

FLAVIUS CHINTASVINTUS, KING.

IV. Concerning Children Born of Different Parents; and What Distinctions Parents may Make in the Disposition of their Estates.

"If a man marries several wives, and has children by all of them, and any of his sons or daughters should die intestate, his or her brothers or sisters shall be entitled to the estate, provided the decedent left neither children nor grandchildren; and said heirs shall have a right to claim it after proving that they are descended from the same father and mother. Where there are children by one father and by different mothers, those only who are descended from the same father have a right to an equal division of the property belonging to him. With regard to those who are sprung from one mother and different fathers, we prescribe the following regulations, to wit: that if a woman should have children by different husbands, only those brothers and sisters who are the children of the same father and mother shall have a right to the inheritance, descending either in the paternal or maternal line from such as have died intestate, or without offspring or descendants. As it has been established by a former law that the grandchildren shall not be deprived of the third part of the estate of their grandparents, it shall be lawful for the grandsons and granddaughters who have lost either of their parents, to share equally with their paternal or maternal uncles in the estates of their grandfathers and grandmothers; that provision only of said law remaining valid, by which it was decreed that parents and grandparents may bestow their property upon their children and grandchildren, or may give away what they please to a stranger."

V. Concerning such Property as Children may have Acquired during the Lives of their Parents.

"Any son who, while his father and mother are living, acquires any property, either through the favor of the king, or through the generosity of his patron, shall be entitled to absolute control of the same, and shall have the right to sell, or give it away to anyone he chooses, as has already been provided by our laws; nor can his father or mother claim any of said property while the son is living. Where, on the other hand, a son obtains property, not through royal generosity, but by his own labor, or during some public expedition; should he be living with his father at the time, the latter shall be entitled to the third part of said property, and the other two-thirds shall belong to the son."

BOOK V.

CONCERNING BUSINESS TRANSACTIONS.

TITLE I. ECCLESIASTICAL AFFAIRS.

THE GLORIOUS FLAVIUS WAMBA, KING.

VII. Emancipated Slaves of the Church, who are still Bound to Render it Service, shall not be Permitted to Marry Persons who are Freeborn.

given to them according to law, and an equal distribution of all inheritance shall be made among the heirs in that a son or daughter shall have full power to dispose of what they receive from their parents at the time of their marriage, according to the provisions aforesaid."

"After the death of the parents, an inventory shall be made, and the property which was donated at the time of the marriage shall be deducted, and the other heirs shall receive an equivalent in value to the amount of said property; and all shall then share equally in the remainder of the estate of the parents."

## FAMILY DIFFERENCES, KIND.

IV. Concerning Children born of Different Parents and Step Relations Parents may Make in the Disposition of their Estates.

"If a man marries several wives, and has children by all of them, and any of his sons or daughters should die intestate, his or her brothers or sisters shall be entitled to the estate, provided the decedent left neither children nor grandchildren; and said heirs shall have a right to claim it after proving that they are descended from the same father and mother. Where there are children by one father and by different mothers, those only who are descended from the same father have a right to an equal division of the property belonging to him. With regard to those who are sprung from one mother and different fathers, we prescribe the following regulations: to wit: that if a woman should have children by different husbands, only those brothers and sisters who are the children of the same father and mother shall have a right to the inheritance, descending either to the paternal or maternal line from such as have died intestate, or without offspring or descendants, or for it has been established by a former law that the grandchildren would not be deprived of the said part of the estate of their grandparents, it shall be useful for the grandsons and granddaughters who have lost either of their parents, to share equally with their paternal or maternal uncle in the estates of their grandfathers and grandmothers; that provision only of said law remaining void, by which it was decreed that parents and grandparents may confer their property upon their children and grandchildren, or may give what they please to a stranger."

V. Concerning such Property as Children may have Acquired during the Life of their Parents.

"Any son who, while his father and mother are living, acquires any property, either through the favor of the king, or through the generosity of his patron, shall be entitled to absolute control of the same, and shall have the right to sell, or give it away to anyone he chooses, as he already possessed property in his own right. Where, on the other hand, a son shall have provided himself with the aid of his father or other kind property while the son is living. Where, on the other hand, a son obtains property, not through royal generosity, nor by his own labor, or during some public expedition should be living with his father at the time, the latter shall be entitled to the third part of said property, and the other two-thirds shall belong to the son."

## RULE V.

## DIVISION BETWEEN ASCENDANTS.

### TITLE I. ECCLESIASTICAL AFFAIRS.

### THE CHRISTIAN FAITH. KIND.

VI. Emancipated Slaves of the Church, who are still Bound to Render it Service, shall not be Permitted to Marry Persons who are Freedmen.

"Great confusion of lineage results where inequality of rank causes degradation of offspring; for what is derived from the root is inevitably found in the fruit of anything. For how indeed can he bear a title of honor, whose parents are bound by the obligation of servitude? We refer to this matter because many of the slaves of the church are set free, but nevertheless do not enjoy absolute liberty; for the reason that they are still bound to serve the church from which they deduce their origin; and who, contrary to natural laws, contract marriages with freeborn women, and seek to have freeborn children who, in fact, are not so; and thus what ought to emure to the public good, becomes in fact a burden to it, both in respect to person and property; as whatever children are born from such an infamous marriage, following the position inferior in rank, from birth become the property of the church, along with all their possessions. Wherefore, that such insolent conduct may be put an end to hereafter, we decree by this law, that if a slave of any church, while it is till entitled to his services, should be freed, and accept his liberty from the priest, he shall not be permitted to marry a freeborn woman. Those, however, who have been freed in the regular manner, and are absolutely exempt from all service to the church by the Cannon Law, shall have the right to marry freeborn women, and shall be entitled to claim all honor and respectability for their offspring."

"But if any of those set free, who are still under the dominion of the church, should venture hereafter to marry any freewoman; as soon as the judge shall be appraised of the fact, both parties shall be scourged three times, as has been provided in a former law concerning freemen and slaves, and the judge shall cause them to be immediately separated; and where they are unwilling to be separated, each shall remain in the condition in which he or she was previously, and any children born of them shall become slaves to the king."

Whatever property has been bestowed by any free person upon any freedman, together with such property as a child of either sex sprung from them can acquire, possess, or waste, shall belong entirely to the heirs of said free person at his death; and, if such heirs should be lacking, it shall become the lawful possession of the king, to be disposed of absolutely at his pleasure. This law shall not only apply to men, but also to women; that is to say, where either a freedman or a freedwoman owing services to the church should be so bold as to marry a freeborn person."

"The following exception shall be observed in the execution of this law, to wit: whoever shall be born of such parents within thirty years of its promulgation, shall not follow the condition of that parent who is bound to give service to the church, but shall be free, along with all the property inherited from his or her parents, both noble and plebeian. Given and confirmed at Toledo, on the twelfth Kalends of January and the fourth year of our reign."

## TITLE II. CONCERNING DONATIONS IN GENERAL.

### III. Concerning Property Given to a Husband or a Wife by the King.

"We especially decree that a wife shall be entitled to no part of any property presented by the king to her husband, unless the latter should bestow a portion of it upon her by way of dowry. And, likewise, should the gift be made to a wife, her husband shall have no right to any of it; nor can he lay claim to it after her death, unless his wife should give or bequeath it to him."



### IV. Concerning Property, in Addition to the Dowry, given to a Wife by her Husband.

"Penal condition or liability results where inequality of rank causes dependence or difficulty for what is derived from the root is inevitably found in the fruit or anything. For how indeed can be free a child of [illegible] where parents are bound by the obligation of paternal [illegible] to their master [illegible] many of the slaves of the church are not [illegible], not perchance do not enjoy absolute liberty for the reason that they are still bound to serve the church from which they derive their origin and also, contrary to natural law, contract marriages with freeborn women, and seek to have freeborn children who, in fact, are not and also that ought to ensue to the public good, because in fact a burden to it, both in respect to person and property as above [illegible] slaves born from such an illicit marriage, following the position inferior to ours, from which became the property of the church, along with all their possessions. Therefore, that such insolent conduct may be put an end to hereafter, we decree by this law, that if a slave of any church, while it is still entitled to his services, should be freed, and accept his liberty from the priest, he shall not be permitted to marry a freeborn woman. Those, however, who have been freed in the regular manner, and are absolutely exempt from all service to the church by the canon law, shall have the right to marry freeborn women, and shall be entitled to claim all honor and responsibility for their offspring."

"But if any of these act free, and are still under the dominion of the church, should contrary perpetrator to marry any freeborn [illegible] as one of the [illegible] shall be applicated of the fact, both parties shall be scourged three times, as the case provided in the same law concerning freedom and slaves, and the judge shall cause them to be immediately [illegible] and where they are unwilling to be separated, each shall remain in the condition in which he or she was previously, and any children born of them shall become slaves to the king."

Whatever property has been bestowed by any free person upon any freedman, together with such property as a child of either may acquire from them can [illegible], possess, or waste, shall belong entirely to the heirs of said free person at his death; and, if such heirs should be lacking, it shall belong to the royal possession of the king, to be disposed of absolutely as his pleasure. This law shall not only apply to men, but also to women, who is to say, where either a freedman or a freedwoman owing service to the church should be so bold as to marry a freeborn person."

"The following exception shall be observed in the execution of this law, to wit: whoever shall be born of such persons within the thirty years of its promulgation, shall not follow the condition of their parent who is bound to give service to the church, but shall be free, along with the property inherited from his or her parents, both male and female. Given and enacted at Toledo, on the twelfth Kalends of January and the fourth year of our reign."

## TITLE II. CONCERNING CONTRACTS IN GENERAL.

III. Concerning Property Given to a Husband or a Wife by the King.

"We especially decree that a wife shall be entitled to no part of any property presented by the king to her husband, unless the latter should bestow a portion of it upon her by way of dowry. And, likewise, should the wife be male to a wife, her husband shall have no right to any of it nor can he lay claim to it after her death, unless his wife should give or bequeath it to him."

## ARIENT LAW.

IV. Concerning Property, in Addition to the Dower, Given to a Wife by Her Husband.

"If a wife should, at any time, in addition to her dowry, accept from her husband property acquired by him as a gift, or by profligate conduct, or the proceeds of claims collected by him, she shall have the absolute disposal of said property until the day of her death, according to the terms of the will of her husband, even though there be children born of that marriage. She shall have the power to expend or use, the income of such property, just as the testator has designated by will; and, during her lifetime, she shall enjoy unhampered possession of all such property, the income of which shall be used for her expense. But if the testator should not make any special disposition of said income, his children shall have the right to said property after his death; and, upon no occasion, shall his wife be allowed to alienate any part of it, excepting the income. Where there are no children by said marriage, the wife shall have full control of all property given her by her husband, according to the terms of his will. But if she should die intestate, the said property shall revert to her husband if he is living, and if he should not be living, it shall belong to his heirs. And we decree that the same rule shall apply to husbands who, at any time, have received gifts of property from their wives."

ANCIENT LAW.

V. Concerning Property given to a Husband by his Wife; and Where a Wife has been Convicted of Adultery.——

"If a husband should give any property to his wife, and she, after his death, should remain chaste, or should marry another husband, she shall have the power of disposing of the property given her by her first husband according to the terms of his will, if she should have no children. If she should die intestate and without children, the property shall revert to her husband if he is living, and if not, it shall belong to his heirs. But if she should have been convicted of adultery, or other meretricious conduct, she shall lose any property which she obtained from her husband, and it shall belong to his heirs, or to his legitimate children."

VII. Concerning Gifts Bestowed upon One Another by Husband and Wife.

"If a husband should give any property to his wife, he must describe it in a written instrument and affix his signature or seal thereto. And, in order that his gift may be valid, it is necessary that two or three freeborn witnesses should attest the document. This law shall also apply to a wife who wishes to confer any gift upon her husband, provided the gift was not extorted by the husband through violence; to the end that the provisions of the law relating to the disposition of property may be, in every respect, preserved."

TITLE III. CONCERNING THE GIFTS OF PATRONS.

I. Where anyone who has been Placed under the Control of Another, or of the Son of that Person, Deserts either his Patron, or the Children of the Latter.

"Where anyone, having a client under his protection, gives him arms or anything else, such gifts shall be the absolute property of the client. If the latter should desire to select another patron, he shall have full authority to do so, for one cannot restrain a freeborn man because he happens to be under his control; but, in such a case, everything to which the patron is entitled shall be given to him. The same rule shall apply to the children of a patron as well as to those of him who was under his protection; and the former shall have a right to any donations that have been given to the latter. Where a client abandons his patron without the latter's consent, he shall be required to restore to him any property which the patron may have given to the parents of the client. And if anyone who has been placed under the protection of another, should acquire

"If a wife should, at any time, in addition to her dower, accept from her husband property secured by him as a gift, or by prenuptial contract, or the proceeds of claims collected by him, she shall have the absolute disposal of said property until the day of her death, according to the terms of the will of her husband, even though there be children born of that marriage. She shall have the power to expend or use, the income of such property, just as the testator has delegated by will and, during her lifetime, she shall enjoy undisputed possession of all such property, the income of which shall be used for her support. But if the testator should not make any special disposition of said income, the children shall have the right to said property after his death and, upon no occasion, SHALL the wife be allowed to alienate any part of it, excepting the income. - There there are no children by said marriage, the wife shall have full control of all property given her by her husband, according to the terms of his will. But if she should die intestate, the said property shall revert to her husband if he is living, and if he should not be living, it shall relate to his heirs. And we decree that the same rule shall apply to husbands who, at any time, have received gifts of property from their wives."

AUSTRIAN LAW.

V. Concerning Property given to a Husband by his Wife; and Where a Wife is Deprived of Ability.

"If a husband should give any property to his wife, and she, after his death, should remain chaste, or should marry another husband, she shall have the power of disposing of the property given her by her first husband according to the terms of his will, if she should have no children. If she should die intestate and without children, the property shall revert to her husband if he is living, and if not, it shall belong to his heirs. But if she should have been convicted of adultery, or other reprehensible conduct, she shall lose any property which she obtained from her husband, and it shall belong to his heirs, or to his legitimate children."

VII. Obscurities Often Performed upon One Another by Husband and Wife.

"If a husband should give any property to his wife, he must describe it in a written instrument and affix his signature or seal thereto. And, in order that his gift may be valid, it is necessary that two or three freeborn witnesses should attest the document. This law shall also apply to a wife who wishes to confer any gift upon her husband, provided the gift was not extorted by the husband through violence; to the end that the provisions of the law relating to the disposition of property may be, in every respect, preserved."

TITLE III. CONCERNING THE RIGHT OF PATRONS.

I. Where anyone who has been Placed under the Control of Another, or of the Son of that Person, Deserts either his Patron, or the Children of the Latter.

"Where anyone, having a client under his protection, gives his sons or anything else, such gifts shall be the absolute property of the client. If the latter should desire to select another patron, he shall peacefully authority to do so, for one cannot restrain a freedman from pursuing to be under his control; in such a case, everything to which the patron is entitled shall be given to him. The same rule shall apply to the children of a patron as well as to them, of his who was under his protection; and the former shall have a right to any donations that have been given to the latter. Where a client abandons his patron without the latter's consent, he shall be required to restore to him any property which the patron may have given to the parents of the client. And if anyone who has been placed under the protection of another, should acquire

any property while he is under such control, half of said property shall belong to the patron or his children, and the other half shall remain in the possession of him who earned it. Where a client leaves a daughter and no sons, in such case we decree, that the daughter shall remain under the protection of the patron. If the patron should provide a husband for her, of equal rank, and anything should be given to her father or her mother, it shall belong to her by right of inheritance. But if, contrary to the will of her patron, she should select for herself a husband of inferior rank, whatever has been given to her father by the patron or by his relatives, shall be restored to said patron or to his heirs."

## TITLE IV. CONCERNING EXCHANGES AND SALES.

### ANCIENT LAW.

XI. Concerning Freemen and Freewoman Sold by Slaves or Freemen.

"If anyone should dare to sell or give away a freeborn person, the judge shall at once cause the offender to be arrested. And in order that the said freeborn person may be restored to his proper rank, the judge shall require the vendor of such person to pay a hundred solidi of gold; and if he should not have sufficient property to pay this sum, he shall receive a hundred lashes in public, and shall be delivered over as a slave to him whom he had the audacity to sell, or give away. If a slave should treat a freeborn person in this manner, after being arrested he shall receive two hundred lashes in public, by order of the judge, and having been scalped he shall be condemned to perpetual servitude. This rule shall apply also to donations and sales of freeborn women."

### FLAVIUS CHINTASVINTUS, KING.

XIII. Concerning Sales by Slaves.

"The property of another cannot be sold contrary to the will of him who is entitled to legal ownership of the same. Therefore, for the reason that an ancient law declared all sales by slaves invalid, which were made at the expense of their masters, we have determined to promulgate a more equitable decree, in order to bring the laws of the country within the bounds of justice; for it is better to amend the acts of those who have fallen into error, than to err in like manner. Wherefore, if anyone, hereafter, should knowingly receive from any slave of either sex, who belongs to another person, a house, or land, or a vineyard, or any personal property, upon any terms whatsoever, the sale, gift, or pledge, made by such a person shall be invalid, and the delivery of the property shall not be required. Where the sale is attended with expense to the purchaser, the property shall be returned intact to the master of the slave, and the purchaser shall lose the price he paid for it; for it is but just that he should sustain loss who attempted to appropriate the property of another for his own advantage. But if the aforesaid slave should sell any animals, or any personal property, or any ornaments of any kind, which belong to himself, or which he had received from his master to be disposed of, such transaction shall be forever valid; and if the master of any servant who has made such a sale should wish to rescind the sale, and should declare that the property which was sold did not belong to the slave, but was his own, the sale shall not be rescinded, unless he who proposes to do so shall establish, either by the testimony of legitimate witnesses, or by his own oath, that the property which he seeks to recover did not belong to the slave, but to himself, and has been disposed of without his permission. The law shall apply only to chattels of trifling value, for the authority of the master is necessary in order to confirm a contract relating to the sale of property of great value and importance."

## TITLE IV. CONCERNING EXCHANGES AND SALES.

### CIVIL LAW.

XI. Concerning Freedom and Freedmen held by Slaves or Freemen.

"If anyone should dare to sell or give away a freeborn person, the judge shall at once cause the offender to be arrested. And in order that the said freeborn person may be restored to his proper rank, the judge shall require the vendor of such person, to pay a hundred solidi of gold; and if he should not have sufficient property to pay this sum, he shall receive a hundred lashes in public, and shall be delivered over as a slave to the person he had the audacity to sell, or give away. If a slave should treat a freeborn person in this manner, after being arrested he shall receive two hundred lashes in public, by order of the judge, and having been compelled he shall be condemned to perpetual servitude. This rule shall apply also to donations and sales of freeborn women."

### TITLE CONCERNING KING.

XIII. Concerning Sales by Slaves.

"The property of another cannot be put contrary to the will of him who is entitled to legal ownership of the same. Therefore, for the reason that an accident has decided all sales by slaves invalid, which were made by the expense of their masters, we have determined to complete a more equitable decree, in order to bring the laws of the country within the bounds of justice; for it is better to mend the acts of those who have fallen into error, than to err in like manner. Therefore, it appears, [illegible] should manumit [illegible] from any slave of either sex, who belongs to another person, a town, or land, or a vineyard, or any personal property, upon any terms whatsoever, the sale, gift, or pledge, made by such a person shall be invalid, and the property of the property shall not be required. Where the sale is attended with expense to the purchaser, the property shall be returned [illegible] to the master of the slave, and the purchaser shall lose the price he paid for it; for it is but just that he should sustain loss who attempted to appropriate the property of another for his own advantage. But if the aforesaid slave should sell any animals, or any personal property, or any effects of any kind, which belong to himself, or which he may receive from his master to be disposed of, such transaction shall be forever valid; and if the master of any servant who has made such a sale should wish to recall the sale, such should declare that the property which was sold did not belong to the slave, but was his own, the sale shall not be [illegible] by the testimony proposed to be made, either by the testimony of [illegible] witnesses, or by his own oath, that the property which he wishes to recover did not belong to the slave, but to himself, and has been disposed of without his permission. The law shall apply only to contracts of trifling value, for the authority of the master is necessary in order to confirm a contract relating to the sale of property of great value and importance."

ANCIENT LAW.

XIV. Where A Slave, who has been Sold, Accuses his Former Master of Crime.

"If anyone should sell a slave, and the latter should accuse his former master of crime, he who sold him may recover said slave from the purchaser by returning the price for which he was sold, in order that he may avenge upon him the crime of which he himself was accused. And we decree that the same law shall be observed concerning female slaves. No servant of either sex, whether sold, given, or exchanged, shall be tortured to obtain evidence against his or her former master, nor shall he or she be believed if they should accuse their former master of crime."

TITLE VII. CONCERNING THE LIBERATION OF SLAVES, AND FREEDMEN.

ANCIENT LAW.

IX. For what Reasons Freedom, once Given, shall be Revoked.

"If anyone should liberate a male or female slave, and it should be proved that this has been done in the presence of two or three witnesses; that is to say, if he should deliver the instrument granting freedom to said slave publicly, in the presence of legitimate witnesses, and should specify in said instrument that the slave himself should be free from the time said instrument was executed, without conditions, and with no reservations, whatever, in favor of himself; he shall have no power to revoke said act of manumission, unless the liberated slave should be insolent to him, or do him some injury, or accuse him of some crime; and for the commission of such offences, his freedom may be revoked. But if the master shall say he liberated the slave under certain conditions, or with some reservation of his authority over him, and these facts do not fully appear from the terms of the written instrument, the witnesses who were present shall testify concerning the terms of the instrument aforesaid, and, afterwards, judgment shall be rendered according to what the terms of said instrument are found to be."

FLAVIUS RECESVINTUS, KING.

XII. Freedmen shall not be Permitted to Testify in Court.

"Neither freedmen nor freedwomen shall be permitted to testify in any cause, except where the testimony of freeborn persons is not available, as is allowed in the case of slaves; because we deem it improper that by the evidence of freedmen injury should be done to those who are freeborn. Persons, however, who are descended from freedmen, shall be fully competent to testify."

ANCIENT LAW.

XIII. Concerning the Disposition of the Property of a Person who has been set Free, should he Die without Leaving Legitimate Children.

"Where a liberated slave dies without leaving any legitimate children, and his patron should have given him anything after he had been set free; or even if he should have forsaken his service, and attached himself to another; all his property shall revert to his former master, or to the heirs of the latter. And if said freedman should remain on the estates of his patron, and should acquire any property by the fruits of his labor, half of said property shall belong to the patron, and the freedman shall have a right to dispose of the other half at his pleasure. If he should place himself under the protection of another patron, and,

ANDORRAN LAW.

XIV. Slave A Slave, who has been sold, becomes his former Master of Crime.

"If anyone should sell a slave, and the latter should accuse his former master of crime, he who sold him may recover said slave from the purchaser by returning the price for which he was sold, in order that he may arraign upon him the crime of which he already was accused. And be aware that the same law shall be observed concerning female slaves. No servant of either sex, whether sold, given, or exchanged, shall be tortured to obtain evidence against his or her former master, nor shall he or she be believed if they should accuse their former master of crime."

TITLE VII. CONCERNING THE EMANCIPATION OF SLAVES, AND FREEMEN.

ANDORRAN LAW.

IX. For what Persons Freedom, done Them, shall be Revoked.

"If anyone should liberate a male or female slave, and it should be proved that this has been done in the presence of two or three witnesses, that is to say, it be should deliver the instrument granting freedom to said slave publicly, in the presence of legitimate witnesses, and should openly in said instrument that the slave himself should to live from the time said instrument was executed, without conditions, and with no reservation, whatever, in favor of himself he shall have no power to revoke said act of manumission, unless the liberated slave should be insolent to him, or do him some injury, or accuse him of some crime; and for the diminution of much substance, his freedom may be revoked. But if the master shall not be illiberal the slave under certain conditions, or with some reservation of his authority over him, and these facts do not fully appear from the terms of the written instrument, the witnesses who were present shall testify concerning the terms of the instrument aforesaid, and, afterwards, judgment shall be rendered according to what the terms of said instrument are found to be."

ITALIAN MUNICIPALITIES, RIMINI.

XII. Freedmen shall not be Permitted to Testify in Courts.

"Neither freedmen nor freedwomen shall be permitted to testify in any cause, except where the testimony of freeborn persons is not available, as is allowed in the case of slaves; because no harm to improper freedom, Freedmen, however, who are liberated from freedmen, shall be fully competent to testify."

ANDORRAN LAW.

XIII. Concerning the Disposition of the Property of a Person who has been cast Free, should he Die without Leaving Legitimate Children.

"There a liberated slave dies without leaving any legitimate offspring, and his patron should have given him nothing after he had been set free or even if he should have foreseen his service, and attended him-self to another; all his property shall revert to his former master, or to the heirs of the latter. And if said freedmen should remain on the estates of his patron, and should acquire any property by the fruits of his labor, half of said property shall belong to the patron, and the freedman shall have a right to dispose of the other half at his pleasure. If he should please himself under the protection of another patron, and,

while in his service, he should acquire any property, the master who liberated him shall be entitled to half of it, and the other half shall descend to the nearest relatives of the freedman, whether they be slaves or free; or he shall have the right to bestow said half of said property upon anyone he may select; but whatever he received from his former master shall belong to the latter."

"The same rule shall apply in the case of female slaves who have been liberated, and we add the following provision, as being conformable to justice, to wit: that no freedman or freedwoman who has received his or her liberty from either master or mistress, shall abandon the latter while they are living. And should they venture to do so, they shall lose the property which they have received, and shall be forcibly returned to the service of their master or mistress."

## BOOK VI.

## CONCERNING CRIMES AND TORTUES.

### TITLE I. CONCERNING THE ACCUSERS OF CRIMINALS.

### ANCIENT LAW.

III. For what Offences, and in what manner, Slaves, of Either Sex, shall be put to the Torture, on account of the Crimes of their Masters.

"No slave, of either sex, shall be tortured in order to obtain evidence of crime against either his or her master or mistress, unless for adultery; or for some offence against the Crown, or against their country; or for counterfeiting, homicide, or witchcraft. And if slaves tortured for such reasons should be proved to be cognizant of the crimes of their masters, and to have concealed them, they shall be punished along with their masters in such way as the king may direct. But if they should voluntarily confess the truth before being put to the question, it will be sufficient if they undergo the torture in order to confirm their testimony, and they shall not suffer the penalty of death. But any slave of either sex, who, after being put to the torture for a capital crime, should also implicate his or her master, and the commission of said crime can be proved by competent evidence, they shall be subject to the same punishment as their master."

### TITLE II. CONCERNING MALEFACTORS AND THEIR ADVISERS, AND POISONERS.

### FLAVIUS CHINTASVINTUS, KING.

IV. Concerning Those who are Guilty of Acts of Witchcraft, or any Injury towards Men, Animals, or any kind of Property whatsoever.

"We decree, by the present law, that if any freeman or slave, of either sex, should attempt to employ, or should employ, witchcraft, charms, or incantations of any kind with intent to strike dumb, maim, or kill, either men or animals; or injure anything movable; or should practice said arts to the detriment of crops, vineyards, or trees; he shall suffer in person and property the same damage he endeavored to inflict upon others."

TITLE I. CONCERNING THE ACQUISITION OF CRIMI-

NALS.

AMBIENT LAW.

III. For even Offenses, and in what manner, Slaves, of Either Sex, shall be put to the Torture, on account of the Crimes of their Masters.

"No slave, of either sex, shall be tortured in order to obtain evidence of crime against either his or her master or relatives, unless for majority or for some offense against the Crown, or against their country or for counterfeiting, banditti, or witchcraft. And if slaves tortured for such reasons should be proved to be accessories of the crimes with their masters, and to have concealed them, they shall be punished along with their masters in such way as the King may direct. But if they should voluntarily confess the truth before being put to the question, it will be sufficient if they undergo the torture in order to confirm their testimony, and they shall not suffer the penalty of death. But any slave of either sex, after being put to the torture for a capital crime, should also implicate his or her master, and the commission of said crimes can be proved by competent evidence, they shall be subject to the same punishments as their masters."

TITLE II. CONCERNING MALEFACTORS AND THEIR

ALIASES, AND NICKNAMES.

FLYING CHILDREN, ETC.

IV. Concerning those who are Guilty of Acts of Witchcraft, or any lying towards Men, Animals, or any kind of Property whatsoever.

"No slave, by the present law, that is any freeman or slave, of either sex, should attempt to employ, or should employ, witchcraft, charms, or incantations of any kind with intent to strike them, maim, or kill, either men or animals or in any manner conspire or should practice said arts to the detriment of crops, vineyards, or trees; he shall suffer in person and property the same penalty as ordained to inflict upon others."

## TITLE III. CONCERNING ABORTION.

### ANCIENT LAW.

1. Concerning Those who Administer Drugs for the Production of Abortion.

"If anyone should administer a potion to a pregnant woman to produce abortion, and the child should die in consequence, the woman who took such a potion, if she is a slave, shall receive two hundred lashes, and if she is freeborn, she shall lose her rank, and shall be given as a slave to whomever we may select."

### ANCIENT LAW.

II. Where a Freeborn Man Causes a Freeborn Woman to Abort.

"If anyone should cause a freeborn woman to abort by a blow, or by any other means, and she should die from the injury, he shall be punished for homicide. But if only an abortion should be produced in consequence, and the woman should be in no wise injured; where a freeman is known to have committed this act upon a freewoman, and the child should be fully deformed, he shall pay two hundred solidi; otherwise, he shall pay a hundred solidi, by way of satisfaction."

### ANCIENT LAW.

III. Where a Freeborn Woman Causes another Freeborn Woman to Abort.

"Where a freeborn woman, either by violence or by any other means, causes another freeborn woman to abort, whether, or not, she should be seriously injured as a result of said act, she shall undergo the same penalty provided in the cases of freeborn men."

### ANCIENT LAW.

IV. Where a Freeborn Man Produces Abortion upon a Slave.

"Where a freeborn man produces abortion upon a female slave, he shall be compelled to pay twenty solidi to the master of the slave."

### ANCIENT LAW.

V. Where a Slave Produces Abortion upon a Freeborn Woman.

"Where a slave produces abortion upon a freeborn woman, he shall receive two hundred lashes in public, and shall be delivered up as a slave to said woman."

### ANCIENT LAW.

VI. Where a Slave Produces Abortion upon a Female Slave.

"Where a male slave produces abortion upon a female slave, he shall be compelled to pay ten solidi to her master, and, in addition, shall receive two hundred lashes."

### FLAVIUS CHINTASVINTUS, KING.

VII. Concerning Those who Kill their Children before, or after, they are Born.

"No depravity is greater than that which characterizes those, who, unmindful of their parental duties, wilfully deprive their children of

life; and, as this crime is said to be increasing throughout the provinces of our kingdom and as men as well as women are said to be guilty of it; therefore, by way of correcting such license, we hereby decree that if either a freewoman or a slave should kill her child before, or after its birth; or should take any potion for the purpose of producing abortion; or should use any other means of putting an end to the life of her child; the judge of the province or district, as soon as he is advised of the fact, shall at once condemn the author of the crime to execution in public; or, should he desire to spare her life, he shall at once cause her eyesight to be completely destroyed; and if it should be proved that her husband either ordered, or permitted the commission of this crime, he shall suffer the same penalty."

## TITLE V. CONCERNING HOMICIDE.

### FLAVIUS CHONTASVINTUS, KING.

XII. No Master shall Kill his Slave without Good Reason; and Where One Freeman Kills Another.

"If anyone who is guilty of crime, or of giving wicked counsel to another, cannot escape punishment, how much more liable is he who deliberately and maliciously commits homicide? For this reason, as very frequently, through the excesses of cruel masters, slaves are deprived of their lives, without having committed any crime; it is proper that this license should be entirely abolished by means of the following law, which shall be hereafter observed by all, to wit: that no master or mistress shall deprive either their own slaves, or the slaves of others, of life, without an order of court. But if such a slave should acknowledge his guilt of a crime for which he is liable to punishment by death, his master or his accuser shall straightway communicate the fact to the judge of the district where the deed was committed; or to the governor of the city, or the governor of the province; and if, after an investigation, it is evident that the crime has been committed, the culprit shall receive, either from the judge or from his own master, the punishment of death, which he deserves."

"If the judge should be unwilling to order him to be executed he shall commit his sentence of death to writing, and the master shall then have the power to either kill him, or to spare his life. If a slave, of either sex, while resisting his or her master, should strike him with a sword, stone, or with any weapon; or should attempt to strike him; and the master, in his own defence, should immediately kill the slave, he shall not be punished for homicide, if it is evident that he defended himself; that is to say, if he can establish by the testimony, or the oaths of other slaves who were present, and by his own oath, that he was acting in his own defence. Where any person, through malice, either acting himself or through the agency of another, kills his own slave, he shall be deprived of the right to testify in court thereafter, as a mark of infamy; and, in order that such rashness may be prevented, he shall be exiled as long as he lives, and be forced to do penance, and his property shall be given to those whom the law has designated as his nearest heirs. Anyone who shall deliberately or intentionally kill, or order to be killed, a slave, or either sex, belonging to another, shall be compelled to give two slaves of equal value, to the master of the one who was killed; and the homicide, according to the provision hereinbefore stated, shall be sentenced to perpetual exile. And if either a master or a mistress, influenced by a sense of injury, or by anger, while inflicting punishment upon a slave of either sex, whether their own, or belonging to another, should kill such slave by a blow; and should be able to prove, either by witnesses, or by his or her own oath, that he or she involuntarily committed said homicide; such person shall not be amenable to punishment under this law. Where any male or female slave admits that he or she has at the instigation, and with the consent of their master, killed a

TITLE V. CONCERNING HOMICIDE.

KILLING CHRISTIANS, BLACK.

XLII. No Master shall Kill his Slave without good Reason; and Where the Treason XLIII Accuses.

XLIV. If anyone who is guilty of crime, or of riding wicked counsel to another, cannot receive punishment, for much more liable is he who deliberately and maliciously commits a homicide. For this reason, as very frequently, through the craftiness of cruel masters, slaves are deprived of their lives, without having committed any crime; it is proper that this Lineage should be entirely abolished by means of the following law, which shall be hereafter observed by all, to wit: that no master or master-as shall deprive either their own slaves, or the slaves of others, of life, without an order of court. But if such a slave should commit any guilt of a crime for which he is liable to punishment by death, his master or his overseer shall straightway communicate the fact to the Judge of the district where the deed was committed; or to the governor of the city, or the governor of the province; and if, after an investigation, it is evident that the crime has been committed, the culprit shall receive either from the Judge or from his own master, the punishment of death, ..... [illegible] be Decreed."

"If the Judge shall be unwilling to order him to be executed but shall commit his sentence of death to writing, and the latter shall have the power to either kill him, or to spare his life. If a slave, of either sex, while violently he or she resists, should strike his with a sword, stone, or with any weapon or should attempt to strike him; and the master, in his defense, should immediately kill the slave, he shall not be punished for homicide, if it is evident that he defended himself; that is to say, if he can establish by the testimony, or the oaths of other slaves who were present, and by his own oath, that he was defending his own defense. There any person, through malice, either accusing or through the agency of another, KILLS his own slave, he shall be deprived of the right to testify in court thereafter, as a matter of infamy; and, in order that such readiness may be prevented, he shall be exiled as long as he lives, and be forced to do penance, and his property shall be given to those who the law has designated as his nearest heirs. Anyone who shall deliberately or intentionally KILL, or order to be killed, a slave, or either not, [illegible] be punished, shall be compelled to give two slaves of equal value, to the master of the one who was killed; and the decision, according to the provisions aforesaid, shall be pronounced by competent suits. And if either a master or a stranger, influenced by a spirit of injury, or by anger, kills [illegible] punishment upon a slave of either sex, mutilate their own, or following to another, should KILL such slave by a blow; and should be able to prove, either by witnesses, or by his or her own oath, that he or she involuntarily committed said homicide; such person shall be compelled to [illegible] under this law. Where any male or female slave shall be of no use by the infirmities, and with no account of their master, KILLED a

fellow slave or any other person, and, having been put to the torture, should accuse their master of having planned the crime for his own benefit; said slaves shall be publicly scourged with a hundred lashes, and shall be scalped as a token of infamy. If, however, the master should swear that he has not ordered, or influenced said slave, in any way, he shall not be considered guilty under this law; and the slave who committed the homicide shall be delivered up into the power of the master of the slave who was killed, to be disposed of at his pleasure; for any slave who kills another slave must be surrendered to the master of the latter."

"Where a freeborn person has been convicted of having killed anyone by treachery, and for the purpose of robbery, while the latter was either on a journey or at home, he shall be at once punished for homicide; and as anyone who by counsel, or by order, instigates another to commit murder, is to be regarded as more infamous than he who perpetrated the deed, it is hereby especially provided that, except in the case of slaves, as hereinbefore set forth, if either a master or a mistress should order a freeborn person, of either sex, to be killed by a slave, and, after a severe, public investigation by torture, confession of the crime is made by said slaves, implicating their master or mistress, their testimony concerning the latter shall not be received, unless they are able to confirm it by the evidence of reputable witnesses. The master who is thus accused must, at once, in the presence of the court, purge himself of all guilt by oath. Those who confess that they committed the homicide, shall either be punished for the crime, or shall be surrendered to the parents of the relatives of him who was killed, that they may do with them whatever they desire. Where the master is unable to make oath, as aforesaid, the male or female servant who has perpetrated such an infamous act, shall receive two hundred lashes, and shall be scalped as a mark of infamy. The master, by whose order such wickedness has been committed, shall suffer the punishment of death."

"If several freeborn persons' by common agreement, should plan the perpetration of a homicide, he who struck the blow, or actually committed the deed, shall be put to death. The others, however, who are convicted of having plotted the crime, although they did not take an active part in its perpetration, shall nevertheless, on account of their wicked counsel, each receive two hundred lashes in public, and undergo the ignominy of being scalped. And, in addition, each shall be compelled to pay fifty solidi to the nearest relatives of the deceased, and should any of them not be possessed of such a sum, he shall be delivered over to them to be their slave forever."

FLAVIUS RECESVINTUS, KING.

XIII. No One shall Deprive a Male or Female Slave of a Limb,

"By a former law we have restrained masters, actuated by unbridled rage, from putting their slaves to death. Now that they may not deform man, who was made in God's own image, while in the act of practising cruelty upon those who are subject to them, we must forbid corporeal multilation. For which reason, we decree that if any master or mistress, without a preliminary investigation in court, should openly and wickedly, deprive their slave of his nose, lip, tongue, ear, or feet; or should tear out his eye; or should mutilate any other part of his body; or should order anyone else to perpetrate any of these acts; he or she shall be sentenced by the bishop in those territory they live, or where the deed is proved to have been committed, to three years of exile, with penance."

"Where such persons have children, who are not implicated with them in their crime, the latter shall take charge of all their property, and care for it; and shall restore it, with an account of their management of the same, when their parents return from exile. If, however, they have no legitimate children, the judge shall give said property into the keeping of other relatives; who, in like manner, upon return of the exiles,

fellow slave or any other person, and, having been put to the torture,
should accuse their master of having planned the crime for his own ben-
efit, all slaves shall be publicly tortured with a pointed ladder, and
shall be nailed as a token of terror. It, however, the master should
prove that he had not ordered, or instructed said slave, in any way, to
commit such crime, or deliberately under this law had the slave who committed
it, not be convicted guilty under this law; then the owner of the
slave who was killed, to be disposed of at his pleasure for any slave who
kills another slave must be surrendered to the master of the latter."

"Where a freeborn person has been convicted of having killed anyone
by treachery, and for the purpose of robbery, while the latter was either
on a journey or at home, he shall be at once punished for manifest and
as murder who by counsel, or by order, instigates another to commit
murder, is to be regarded as more infamous than he who perpetrated the
deed. It is to be properly appreciated that, except in the case of slaves,
no further more set forth, if either a master or a mistress should order
a freeborn person, of either sex, to be killed by a slave, and, after a
report, public investigation by torture, declaration of the crime is made
by said slaves, implicating their master or mistress, their testimony
concerning the latter shall not be received, unless they are able to
confirm it by the evidence of reputable witnesses. The master who is
thus accused must, at once, in the presence of the court, purge him-
self of all guilt by oath. Those who declare that they committed the
capital, shall either be punished for the crime, or shall be surrendered
to the parents of the relatives of him who was killed, that they may do
with them whatever they desire. Where the master is unable to defend
himself, the male or female servant who has perpetrated such a
misdemeanor, shall receive two hundred lashes, and shall be confined
in a mark of infamy. The master, by whose order such wickedness has
been committed, shall suffer the punishment of death."

"If several freeborn persons, by common agreement, should plan
the perpetration of a homicide, be who attack the slave, or maltreat,
committed the deed, shall be put to death. The others, however, who are
convicted of having plotted the crime, although they did not take an
active part in the perpetration, shall nevertheless, on account of ——— it
alone connect, each receive two hundred lashes in public, and undergo
the penalty of being exiled. And, in addition, each shall be compelled
to pay fifty pounds to the nearest relatives of the deceased, and should
any of them not be possessed of such a sum, he shall be delivered over
to them to be their slave forever."

## TRAJUS NERONIANUS, 815D.

XIII. No One shall Deprive a Male or Female Slave of a Limb.

"By a former law we have restrained certain, actuated by unbridled
rage, from putting their slaves to death. Now that they may not deprive
them, who was made in God's own image, while in the heat of provocation
cruelly upon them as are subject to them, we must forbid corporeal
mutilation. For which reason, we decree that if any master or mistress,
without a preliminary investigation in court, should cruelly and unlawfully
tear out his eye or should mutilate any other part of his body or remove
therefrom their slave of his nose, lip, tongue, ear, or limb, or should
order anyone else to perpetrate any of those acts he or she shall be
sentenced by the Judge to those fortieth they live, or where the
In proved to have been committed, to three years of exile, with forfeiture

"Where such persons have children, who are not implicated with them
in their crime, the latter shall take charge of all their property, and
care for it; and shall restore it, with an account of their management
of the same, when their parents return from exile. If, however, they have
no legitimate children, the Judge shall give said property into the cust-
ody of other relatives who, in like manner, upon return of the exiles,

must restore to them said property, with an account of their management of the same. But should there be no such relative, the judge himself shall take charge of the property and preserve it, and, in like manner, give an account of it, when the parties return from exile."

## BOOK VII.

## CONCERNING THEFT AND FRAUD.

### TITLE III. CONCERNING APPROPRIATORS AND KIDNAPPERS OF SLAVES.

### FLAVIUS RECESVINTUS, KING.

II. Where a Freeman is Convicted of Having Stolen the Male or Female Slave of Another.

"If a freeman should kidnap the male or female slave of another, he shall be compelled to give, by way of reparation, four slaves of the same sex to the master or mistress of said slave, and shall receive a hundred lashes in public; and if he should not have the property wherewith to make restitution, he himself shall be reduced to slavery."

## BOOK IX.

## CONCERNING FUGITIVES AND REFUGEES.

### TITLE I. CONCERNING FUGITIVES, AND THOSE WHO CONCEAL, AND ASSIST THEM IN THEIR FLIGHT.

XV. Where a Fugitive Slave Falsely Declares that he is Freeborn.

"Where a fugitive slave comes among persons to whom he is unknown, and asserting that he is freeborn, afterwards marries a freeborn woman, and said woman, or her parents, or relatives, should be convinced of the fact that he is a slave, and the judge should have investigated the matter, in behalf of the woman, and the master of said slave should add his testimony; no reproach shall attach to said woman, nor shall she be liable for any damages, but she shall continue to be free, and any children she may have had by said slave, shall follow the condition of their mother. She shall not be separated from said slave should she desire to remain with him, provided his master gives his consent."

### FLAVIUS CHINTASVINTUS, KING.

XVI. Where a Fugitive Slave, Declaring that he is Freeborn, Marries a Freeborn Woman.

"For the reason that fugitive slaves falsely declaring themselves to be freemen, frequently contract marriages with freeborn women, we now decree by the following law, that where a slave, having escaped from his master, by any means whatever, take refugee with anyone, whether he declares

quat restore to them said property, with an account of their management
of the same. But should there be no such relative, the Judge himself
shall take charge of the property and preserve it, and, in like manner,
give an account of it, when the parties return from exile."

BOOK VII.

CONCERNING THEFT AND FRAUD.

TITLE III. CONCERNING APPROPRIATIONS AND

KIDNAPPING OF SLAVES.

FLAVIUS MACIANUS, KING.

13. Where a Freeman is Convicted of Having Stolen the Male or Female
Slave of Another.

"If a freeman should kidnap the male or female slave of another, he
shall be compelled to give, by way of reparation, four slaves of the same
sex to the owner, or mistress of said slave, and shall receive a Hundred
Lashes in public and it be should not have the property wherewith to
make restitution, he himself shall be reduced to slavery."

BOOK IX.

CONCERNING FUGITIVES AND RUNAWAYS.

TITLE I. CONCERNING FUGITIVES, AND WHERE THE

CHURCH, AND ASSIST THEM IN THEIR FLIGHT.

XV. Where a Fugitive Slave Falsely Declares Himself to be Free-born.

Where a fugitive slave comes among persons to whom he is unknown,
and asserting that he is free-born, afterwards marries a free-born woman,
and said woman, or her parents, or relatives, should be convinced of the
fact that he is a slave, and the Judge should have investigated the matter,
in behalf of the woman, and the master of said slave should add his testimony
no reproach shall attach to said woman, nor shall she be liable for any
damages, but she shall continue to be free, and any children she may have
had by said slave, shall follow the condition of their mother. She shall not
be separated from said slave should she desire to remain with him, provided
his master gives his consent."

FLAVIUS CHILTARIMUS, KING.

XVI. Where a Fugitive Slave, Declaring that He is Free-born, Marries
a Free-born Woman.

"For the reason that fugitive slaves falsely declaring themselves to
be freemen, frequently contract marriages with free-born women, we now
decree by the following law, that where a slave, having escaped from his
master, by any means whatever, take marriage with anyone, whether he declare

that he is free or not, and, under such circumstances, marries a freeborn woman, and issue of said fraudulent union shall invariably follow the condition of the father; and when the master of the slave appears, he shall have a right to claim as his own, not only said fugitive, but also his children, and such property as they may be possessed of. A similar rule shall apply to female slaves who, escaping from their masters, presume to contract marriages with freeborn men."

## BOOK XI.

## CONCERNING THE SICK AND THE DEAD, AND MERCHANTS WHO COME FROM BEYOND SEAS.

### TITLE I. CONCERNING PHYSICIANS AND SICK PERSONS.

I. No Physician shall Presume to Bleed a Woman, in the Absence of her Relatives.

"No physician shall presume to bleed a freeborn woman without the presence of her father, mother, brother, son, uncle, or some other relative, except urgent necessity should demand it; and where it happens that none of the above-named persons can be present, the woman must be bled in the presence of respectable neighbors or slaves, of either sex, according to the nature of her illness. If a physician should do this without the presence of any of the aforesaid persons, he shall be compelled to pay ten solidi to the husband or the relatives of said woman; for the reason that it is not at all improbable that, on such an occasion, wantonness may sometimes occur."

## BOOK XII.

## CONCERNING THE PREVENTION OF OFFICIAL OPPRESSION, AND THE THOROUGH EXTINCTION OF HERETICAL SECTS.

### TITLE II. CONCERNING THE ERADICATION OF THE ERRORS OF ALL HERETICS AND JEWS.

XI. No Jew shall Circumcise a Christian Slave.

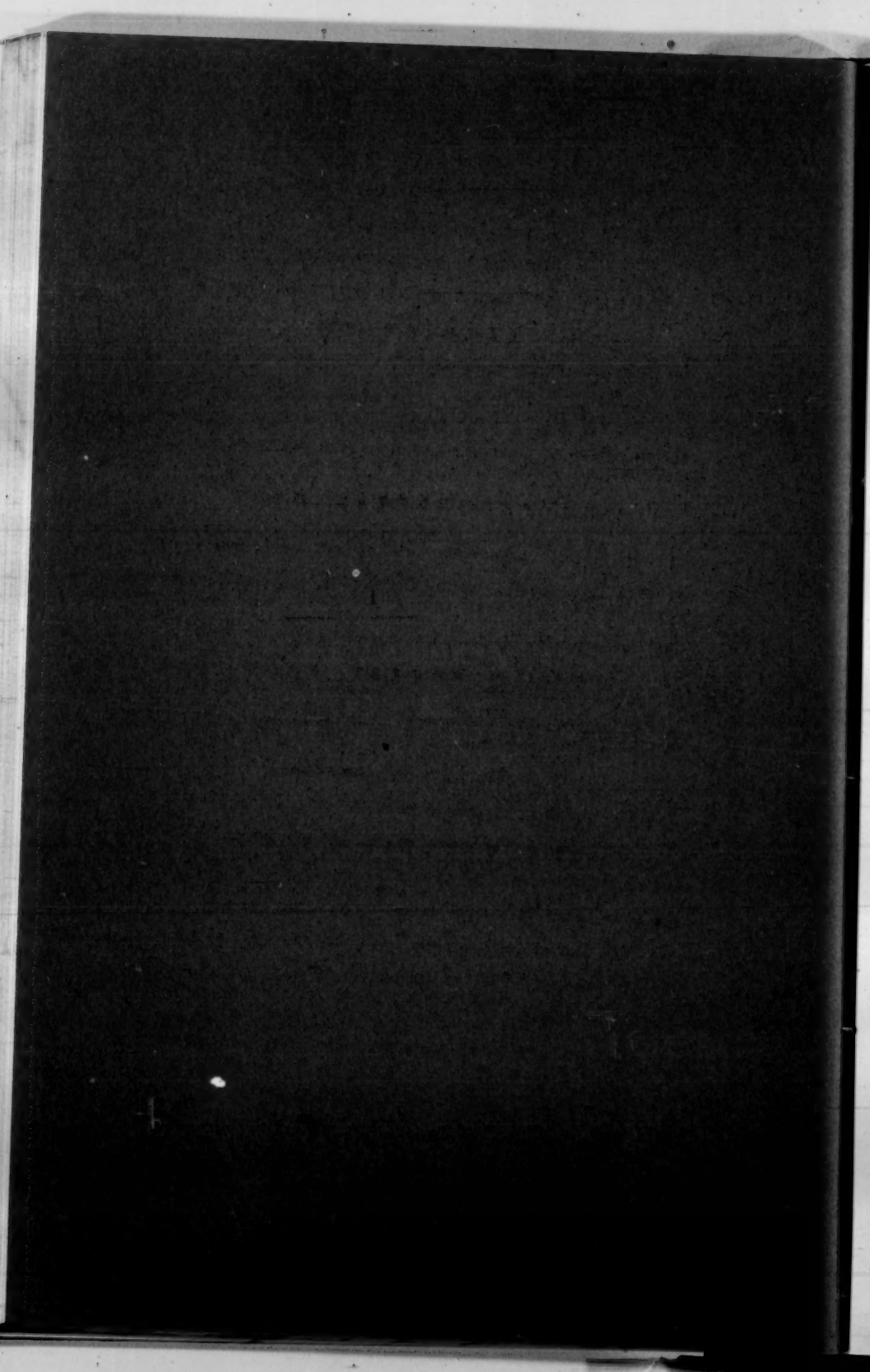
"It shall not be lawful for a Jew to purchase a Christian slave, or to accept of one as a gift. Should a Jew purchase such a slave or accept of him as a gift and then circumcise him, he shall lose the price of said slave, and the latter shall be free. The Jew who circumcises a Christian slave shall forfeit all his property to the king. Any slave of either sex who is unwilling to become a Jew, shall receive his or her freedom."

THE LAWS OF HOWEL

THE VENEDOTIAN CODE

THE DIMETIAN CODE

THE GWENTIAN CODE



CYVREITHIAU HYIEL DDA,

AR DDULL GCYNEDD;

THE LAWS OF HOWELL DD,

ACCORDING TO THE VENEDOTIAN CODE.

XXVII. OF THE HANDMAID, HER OFFICE, HER PRIVILEGE, AND HER DUTY, THIS TREATS.

1. "The fifth is the handmaid."

2. "She is to have her horse in attendance; and the queen's old clothes."

3. "She is to have her old shifts, her old bed-linen, her old bands, her old bridles, her old shoes, and her old saddles."

4. "She is to have one share of the supper silver."

5. "Her protection is, from the time she shall spread the clothes on the queen's bed, until she shall take them off the following day."

6. "She is to have her bed in the chamber, that she may hear the least word spoken by the queen."

7. "Her worth and saraad are according to her privilege."

8. "Her saraad, if she be married, is a third of the saraad of her husband: if she be not married, half the saraad of her brother."

9. "Her worth, whether single or married, is half the worth of her brother. And so for every woman."

XXXIX. (OF THE BAKING-WOMAN.)

1. "The eighth is the baking-woman."

2. "She is to have her food from the palace; and her clothes; and a mess, when the king is present; and a cake, at the conclusion of baking, of every kind of flour she may bake; and her bed in the buttery."

3. "She is not to rise to anyone while making bread."

4. "Her protection is, as far as she can throw her peel."

5. "Her saraad, if she be married, is one third of the saraad of her husband, of her and every wife; and if she be not married, one half of the saraad of her brother."

6. "Her worth, whether single or otherwise, is half the worth of her brother."

XLII. (OF THE LAUNDRESS.)

1. "The eleventh is the laundress."

2. "She is to have her food from the palace; a mess, when the king is present; and her clothes: and she is to have, on the day she shall wash for the queen, a gift from her."

3. "Her protection is, as far as she can throw her washing bettle."

4. "Her saraad, and her worth are as those of the baking-woman."

## BOOK THE SECOND.

## (THE LAWS OF THE COUNTRY.)

### 1. HERE BEGIN THE LAWS OF THE WOMEN.

1. "The first of them is: if a woman be given in marriage, she is to abide by her 'a gweddi' unto the end of the seventh year; and if there be three nights wanting of the seventh current year, and they separate, let them share into two portions everything belonging to them."

2. "The wife is to share, the husband is to choose of the things which the law shall not share between them. The swine to the husband, and the sheep to the wife; if there be only one kind, they are to be shared: and if there be sheep and goats, the sheep to the husband, and the goats to the wife; if there be only one kind, they are to be shared."

3. "Of the children, two shares to the father, and one to the mother; the oldest and the youngest to the father, and the middlemost to the mother."

4. "The household furniture is to be thus shared: all the milking vessels, except one pail, go to the wife; all the dishes, except one dish, go to the wife; and those two go to the husband: the wife is to have the car and the yoke to convey her furniture from the house. The husband is to have all the drinking vessels; the husband is to have the riddle: the wife is to have the small sieve. The husband is to have the uper stone of the quern; and the wife the lower. The clothes that are over them belong to the wife; the clothes that are under them belong to the husband, until he marries again; and after he marries, the clothes are to be given up to the wife: and if another wife sleep upon the clothes, let her pay 'wyneb-werth' to the other. To the husband belong the kettle, the bed coverlet, the bolster of the dormitory, the coulter, the fuel axe, the auger, the settle, and all the hooks, except one; and that to the wife. To the wife belong the pan, the trivet, the broad axe, the hedge bill, the plough share, all the flax, the linseed, the wool, the house-bag, with its contents, except gold and silver; which, if there be any, are to be shared: the house-bag is the hand-bag. If there be webs, they are to be shared; the yarn balls to the children if there be any, if not they are to be shared. The husband is to have the barn, and all the corn above ground and under ground: the husband is to have all the poultry, and one of the cats, the rest belong to the wife."

5. "The provisions are to be thus shared: to the wife belong the meat in the brine, and the cheese in the brine; and after they are hung up they belong to the husband: to the wife belong the vessels of butter in cut, the meat in cut, and the cheese in cut: to the wife belongs as much of meal as she can carry, between her arms and knees, from the store-room into the house."

6. "To each of them belong their clothes, except their mantles; the mantles are to be shared."

7. "If the husband be privileged, let him show his privilege before the sharing; and after he shall have obtained his privilege, let there be a sharing, as we have said above."

8. "Their debts let them pay in equal shares."

9. "And if they separate before the seventh year, let there be paid to her her a gweddi, her 'argyvreu,' and her 'cowyll;' and if she was given when a maid, whatever of those things remain she shall have: and if she leave her husband before the seventh year, she loses all these, except her cowyll, and her wyneb-werth for his 'gowyn.'"

10. "Should her husband be leprous, or have fetid breath, or be incapable of marital duties; if on account of one of these three things she leave her husband, she is to have the whole of her property."

11. "If by dying they part, she is to have everything in two portions, except the corn: no wife in the world is to have a share of the corn, but an espoused wife."

12. "If by dying and living they separate, let the sick aided by the confessor, share, and let the healthy choose."

13. "The sick is not to bequeath aught, except a daered to the church, and an ebediw to the lord, and his debts: and, should be bequeath, the son can break the bequest; and such a one is called the uncourteous son. Whoever therefore shall break a legal bequest, whether daered or debts, shall be excommunicated, as a publican or pagan."

14. "If living they separate, let her and her property remain in the house to the end of nine days and nine nights, to ascertain whether the separation be legal; and if the separation be right, at the end of the ninth day, let her property go before, and, after the last penny, let her go herself."

15. "The saraad of a married woman is according to the privilege of the husband; that is, a third of her husband's saraad: before she is betrothed to a man, it is according to the privilege of her brother's saraad; that is, half the saraad of her brother."

16. "Her galanas, whether married or not, is half the galanas of her brother."

17. "If the husband take another wife, after he shall have parted from the first wife; the first is free."

18. "If a man part from his wife, and she be minded to take another husband, and the first husband should repent having parted from his wife, and overtake her with one foot in the bed and the other outside the bed, the prior husband is to have the woman."

19. "If a married woman commit any heinous crime, either by giving a kiss to another man, vel praebendo se palpandam, vel stuprandam; those are saraad to her husband."

20. "Si coitus factus fuerit, the saraad shall be increased by one half; because it is productive of family enmity,"

21. "Si palpatio facta fuerit, let there be paid to him his saraad, and that without augmentation,"

22. "If it be giving a kiss, only two parts of the saraad are to be paid, since there is not a complete act,"

23. "If the man deny se deprehensum fuisse inter femora ejus; let him give the oaths of fifty men; and the woman the oaths of fifty woman."

24. "If the man deny se eam palpavisse; he is to give the oaths of fourteen men; and the woman the oaths of fourteen women, and those their relations, including her mother, her father, her brothers, and her sisters."

25. "If he deny giving a kiss; let the man give the oaths of seven men; and the woman the oaths of seven women, and those their relations, including her mother, her father, her brothers, and her sisters."

26. "Whoever shall take away a maid clandestinely, and before connexion between them, the maid ask: 'What wilt thou give me:' and he minutely inquire the amount he is to give her, and that upon his faith; if, after this, he attempt to deny it, and she urge her claim legally against him, she is to be credited: for there her word is conclusive as to her purity; since he took her to a place where there were no wedding guests."

27. "If a maid be given to a man, and she be found by the man to be deflowered, and he allow her to remain in his bed until the following morning; he cannot, on the morrow, take away any of her due: sed si, postquam illam vitiatam deprehenderit, surrexerit ad pronubas, pene erecto, et testaretur eis se illam vitiatam invenisse, et non concubuerit cum illa ad crastinune usque; nihil ab eo in crastinum habebit. Si mammae et crines et menses apparuerint, tunc lex pronuntiat neminem posse certo scire mum virgo sit neone, propter haec signa; and therefore the law allows her to be exculpated by the oaths of seven persons, including her mother, her father, her brothers, and her sisters. If she will not be exculpated, let her shift be cut off as high as her hip; and let a yearling steer be put in her hand, having his tail greased with tallow; and if she could hold him by his tail, let her take him in lieu of her share of the argyvreu; and, if she cannot hold him, let her be without anything."

28. "Whoever shall give a woman to a man, must pay her amobyr, or take sureties from her for its payment: but if she dispose of herself, let her pay her amobyr herself; because she has been her own disposer."

29. "If a man take away a woman clandestinely, and bring her to the house of an uchelwr, to sleep with her, and the gwrda do not take security for her amobyr, let him pay it himself."

30. "If a man take a woman clandestinely, let her be,until the end of the seventh year, upon three steers whose horn and ear are of equal length; and since she herself lost her own privilege, let her be on that privilege to the end of the seventh year: and if she have argyvreu, let that remain entire unto the end of the seventh year; if she permit it to be made of, no compensation shall be made to her for what is consumed for food and clothes. From the end of the seventh year, if she reach within three nights of the seventh year, a sharing is to be made with her in halves, as a betrothed wife: because a wife, whether abducted, or betrothed, continues on the privilege of her agweddi only unto the end of the seventh year; and she is not subject to agweddi after the expiration of the seven years; therefore let them share in halves."

31. "Whoever shall sleep three nights with a woman, from the time the fire is covered until it be uncovered the following morning, and after that willeth to separate; let him give her an ox that shall be worth twenty pence, another worth thirty pence, and another worth sixty pence; and, if he take her to house and home, and she live with him unto the end of seven years; thence forwards he is to share with her, as with a betrothed wife."

32. "There are three legal agweddi: the agweddi of a king's daughter, twenty-four pounds; the cowyel of a king's daughter, eight pounds; the agweddi of a gwrda's daughter, three pounds; and her cowyel one pound; the agweddi of an 'aillt's' daughter, one pound; and her cowyel six score pence."

39. "The three peculiars of a woman: her cowyll, her gowyn, and her saraad: the reason these three are called three peculiars is, because they are three proprieties of a woman, and cannot be taken from her for any cause: her cowyll is what she receives for her maidenhood; her saraad is, for every

32. "If he deny giving a kine; let the man give the cattle of seven neat and the cattle of seven women, and those their relations, including her father, her brother, and her sisters."

33. "Whoever shall take away a maid slandereously, and before consummation between them, the maid says 'That will I not live with' and he shall duly inquire the amount he is to give her, and that upon his oath if, after this, he attempt to deny it, and she urge her claim legally against him, she is to be credited. For there are no wedding expenses to her parish alone be took her to a place where there were no wedding guests."

37. "If a maid be given to a man, and she be found by the one to be followered, and to allow her to remain in his bed until the following normal observant, then let her remarriage become void unless she give all possession, brother, and sisters and therefore the law allows her to be exempted by the oaths of seven persons, including her mother, her father, her brother, and her sisters. If she will not be exonerated, let her still be cut off as high as her hip and let a wanting steer to put in her head, having his tail crossed with tallow; and if she could hold him by his tail, let her take in lieu of her share of the strayed; and if she cannot hold him, let her be wiped away entirely."

38. "Whoever shall give a woman to a man, must pay her mother, or take murders from her for its payment. But if she dispose of herself, let her pay her mother herself; because she has been her own disposer."

39. "If a man take away a woman slandereously, and strike her to the ground or modify, to sleep with her, and she dare to not take absurdly for her mother, let him pay it himself."

40. "If a man take a woman slandereously, let her be until the end of the seventh year, upon their stamp where fore and ere of equal weight and place she herself let her own privileges, let one be on that privilege to the end of the seventh year. But if she have children, let that people entire unto the end of the seventh year; if she permit it to be made of, no compensation shall be made to her for what is consumed for food and clothes. From the end of the seventh year, if she reach within three eights of the seventh year, a sharing is to be made with her in halves, as a betrothed wife; because a wife, whether slighted, or betrothed, continues on the privilege of her steward only upto the end of the seventh year; but she is not subject to steward after the expiration of the seven years; therefore let them share in halves."

31. "Whoever shall sleep three eights with a woman, from the time the life is covered until it be uncovered the following sorrow, and after that willet to separate let him give her an ox that shall be with yearly peace, another worn thirty pence, and another worn sixty pence; if he take her to home and home, and she live with him unto the end of seven years; thence forwards he is to share with her, as with a betrothed wife."

32. "There are three legal steward: the steward of a king's inquiter, of a 'skilful' daughter, one loyal and for cowful six score pence."

33. "The three peculiars of a woman: her cowyn, her corps, and her carrell: the reason those three are called three peculiars is, because they are three properties of a woman, and cannot be taken from her for any manner for cowyn is what she receives for her maidenhood; her grieved to, for every

beating given to her by her husband, except for three things; and those three, for which she may be beaten, are for giving anything which she ought not to give; for being detected with another man in a covert; and for wishing drivel upon his beard; and, if for being found with another man he chastise her, he is not to have any satisfaction besides that; for there ought not to be both satisfaction and vengeance for the same crime; her gowyn is, if she detect her husband with another woman, let him pay her six score pence for the first offence, for the second one pound; if she detect him a third time, she can separate from him, without losing anything that belongs to her: and the property she may obtain from the above three things is to be apart from her husband; and, if she endure, without separation, after the third offence, she is not entitled to any satisfaction. The wife of the king may give, without the king's permission, the third of what shall come of 'doved' to the king. The wife of an uchelwr may give her mantle, her shift, her shoes, her hand linen, her meat and drink and the contents of her store-room, and may lend all her furniture. The wife of a taeog can give nothing but her head gear; and lend only her sieve, and that as far as her voice can be heard, from the dunghill, requesting its return."

40. "The three holds of a wife: the first is, when she is slept with, she is not to move from thence until the end of the ninth day; and when she shall separate from her husband, she is not to move from the house until the end of the ninth day; and then, after the last penny of her property; and when her husband shall die, she is not to move from the house until the end of the ninth day; and then, after the last penny, let her go."

41. "In three modes an amobyr accrues to a woman: one is, by gift and delivery before she be slept with; the second is, by open cohabitation, though there may be no gift nor delivery; the third is, by her pregnancy."

42. "The amobyr of the daughter of a maer coughellor, one pound."

43. "The amobyr of the daughter of a maer, six score pence."

44. "The amobyr of the daughter of a chief of a kindred, six score pence and one pound."

45. "The amobyr of the daughter of an uchelwr, six score pence."

46. "The amobyr of the daughter of an aillit, four score pence."

47. "The amobyr of the daughter of an 'alltud', twenty-four pence."

48. "The amobyr of the daughter of every chief officer, according to some, a pound, according to others, six score pence."

49. "The amobyr of the daughters of each of the other officers, according to some, six score pence, according to others, three score pence."

50. "The amobyr of the daughter of a slave, twelve pence."

52. "The ebediw of a female having a cell, sixteen pence."

55. "Every woman is to go the way she willeth, freely, for she is not to be revenant; and nothing is due from her, except her amobyr, and only one amobyr; for a woman owes no ebediw, only her amobyr; therefore, as a man is to pay only one ebediw, in like manner, a woman is to pay only one amobyr; for there is no ebediw from her, only her amobyr."

56. "A woman cannot be admitted as surety, or witness concerning a man."

58. "If a Welsh female be given to an alltud, her saraad shall be according to the privilege of her husband, until the alltud shall die; and, after the death of the alltud, until she take another husband; since she is not to revert to the privilege of her kindred."

60. "A woman ought neither to buy nor sell without consent of the husband unless she be married: if she be married however, she may buy and sell."

62. "If a maid be given in marriage to a man, and her cowyll be not specified before she rise from her bed in the morning; he is not answerable to her for it thenceforward."

63. "If a maid declare not her cowyll before she rise from her bed in the morning; the cowyll is to be thenceforward in common between them."

64. "A daughter is to have, of her father's property only half the share a brother shall have; and she is to pay for galanas only the half of what a brother shall pay; and that for her children: and, if she have no children, and she swear that there never will be any, she is to pay nothing; and if there be children arrived at legal age, let them pay on their own account thenceforward."

65. "No woman in the world, old or young, is to pay the spear penny."

70. "If a woman be given to a man, and her property specified, and the whole of the property had, except one penny, and that be not had, we say that the man may separate from her on that account, and she cannot reclaim any of her property: and that is the single penny that takes away a hundred."

71. "Surety is not requisite for the dilysrwydd of property which a woman brings as her portion."

72. "A woman is entitled to the third of the saraad of her husband, whether from his homicide, or from any other cause."

73. "A 'raith' of women is not to go with a woman, either for theft or for murder or for surety, but a raith of men."

75. "If a maid be given to a man and, the marriage being unconsummated, she receive an injury; according to the privilege of her husband she is rated, and is to be compensated, and not according to the privilege of her brother; and she is called a maiden wife: and if a rape be committed upon her, she is to be paid her cowyll."

76. "If a woman be slandered on account of a man; the first time, the oaths of seven women exculpate her; the second time, the oaths of fourteen women; the third time the oaths of fifty women; and thence onward, for every slander, the oaths of fifty women."

77. "If a woman kill a man, she is to have the spear penny: and this is the person who receives, but does not pay."

78. "Every lady is entitled to the amobyr of the women of her domain."

79. "Every land maer is to have the amobyr of the women of the maertrev."

80. "A common prostitute has no privilege; though a rape be committed upon her, she is not to obtain compensation: if she be insulted, let her saraad be paid, according to the privilege of her brother; and her galanas, if she be killed."

64. "A daughter is to have, of her father's property only half the share a brother shall have; and she is to pay for release only the half of what a brother shall pay; and that for her children; and, if she have no children, and she avow that there never will be any, she is to pay no more than is there be children married or dead; let them pay on their own account thenceforward."

65. "The person in the world, old or young, is to pay the whole penalty."

66. "If a woman be given to a man, and her property specified, and the whole of the property had, except one penny, not that to not [illegible], so may that the man may abscond from her on that account, and she cannot reclaim any of her property; and that is the single penny that takes away a husband."

71. "Surety is not requisite for the alienation of property, [illegible] a woman either on her portion."

72. "A woman is entitled to the third of the wereld of her husband, whether from his bestowing, or from any other cause."

73. "A 'ruith' of women is not to go with a [illegible] either for theft or for murder or for surety, but a ruith of [illegible]."

75. "If a maid be given to a man, and the marriage being unconsummated, she receive an injury, according to the privilege of her husband she is rated, and is to be compensated, and not according to the privilege of her [illegible] and she is called a maiden wife; and if a rape be committed upon her, she is to be paid for nought."

77. "If a woman be slandered on account of a want the first time, the outs of eight score compleate her; the second time, the outs of four-teen; and the third time the outs of fifty screat and three ounces, for every slander, the outs of fifty screat."

79. "If a youth kill a man, he is to have the upper penny; and this is the person who receives, but does not pay."

79. "Every lady is entitled to the mundr of the woman of her family."

79. "Every handmaer is to have the mundr of the woman of the superior."

80. "A common prostitute has no privilege; though a rape be committed upon her, she is not to obtain compensation; if she be insulted, let her nought be paid, according to the privilege of her husband and her guiness, if she be killed."

81. "For every offence that a woman may commit, let her kindred pay for her, as for a man, unless she be married; but if she be married, let her and her husband pay her camlwrw and her dowry."

82. "A 'gwaesavwr,' an 'adlamwr,' and an 'aswynwr.' If a gwaesavwr leave his 'gwaesav,' he shall pay six score pence: an adlamwr shall pay three score pence: an aswynwr shall pay thirty pence."

VI. OF THE CLAIM OF SURETY AND DEBTOR? THIS TREATS.

32. "The third is, a female surety is no surety; that is to say, a woman is not to be a surety, because women cannot deny a surety; nor is she to have a raith of men to deny it. The law, however, say that surety given by a woman is a surety; because whoever can inquire into the right to property, the law enacts it to be legal for that person to warrant it; and since a woman can inquire into the right to property, we say that it is indispensable to take surety for dilysrwydd from her also; and that the surety she may give is a surety: for since a man can deny her, she is also to have men with her to deny a surety."

33. "If a woman give her 'briduw' for anything, and she deny it legally; we say that women shall deny it with her."

XV. A WOMAN IS NOT TO HAVE PATRIMONY ACCORDING

TO THE MEN OF GWYNEDD.

1. "According to the men of Gwynedd a woman is not to have patrimony, because two rights are not to centre in the same person; those are, the patrimony of the husband, and her own: and since she is not to have patrimony, she is not to be given in marriage, except where her sons can obtain patrimony: and if she be given, her sons are to have maternity."

2. "Some say, that the sons of no woman are to have an inheritance by maternity, except the sons of one woman; and that one is, a woman whom her father and her brothers shall give legally in marriage to an alltud. Others say, that though her relations shall give her in marriage to an alltud; yet, if she be not given by those above named, her sons are not to have patrimony."

3. "The law, nevertheless, says, that there are three women, whose sons are to have property by maternity: one of them is, a woman whom her family shall give legally to an alltud: the second is, a woman openly violated by an alltud, and, in consequence of that violation, having a son by the alltud: the law says, that since she has not lost her privilege, her son does not lose his right by maternity: the third is, a woman whom family shall give as an hostage to a foreign country, and, in that condition of an hostage, she bear a son by an alltud; that son is entitled to inheritance by maternity."

4. "There is no woman, however, who gives herself up to an alltud, whose sons can have a right by maternity."

XXX. OF THE LAW OF A DAUGHTER AND HER RIGHTS

THIS IS.

1. "From the time a girl is baptized, until she shall attain the age of seven years, she is not to be put to her oath."

2. "From the time of her birth, until she be twelve years of age, she is to be at her father's platter."

3. "From her twelfth year onward, mammae et crines et menses apparebunt; and then she is become of age to be given to a husband: and, from

XXX. OF THE LAW OF A DAUGHTER AND HER RIGHTS

THUS IS.

1. "From the time a girl is baptized, until she shall attain the age of seven years, she is not to be put to pain by her owner."

2. "From the time of her birth, until she be twelve years of age, she is to be at her father's pleasure."

3. "From her twelfth year onward, because of crimes or reasons apparent; and from she is become of age to be given to a husband; and from

81. "For every offence that a woman may commit, let her kindred pay for her, as for a man, unless she be married; but if she be married, let her and not husband pay her ransom and her damage."

82. "A 'Lawcarer,' an 'Aylawt,' and an 'Awarer.' If a Lawcarer have his 'Lawcare,' he shall pay six score pence; an Aylawt shall pay five score pence; an Awarer shall pay thirty pence."

VI. IF THE CLAIM OF MURDER ARE DENIED THIS TREATS.

30. "The third is, a female murder is no murder that is to say. A woman is not to be a murder, because women cannot slay a murder nor is she to have a right of one to slay it. The law, however, any that murder given by a woman is a murder; because whoever can receive into the right to property, the law ensures it to be legal for that person to warrant it; and since a woman can acquire into the right to property, we say that it is indispensable to take murder for dispersed from her mind; as that the murder she may give is a murder. For since a man may slay her, she is also to have one with her to slay a murder."

33. "If a woman give for 'bridam' for anything, and she deny it legally so may that woman shall keep it with her."

IX. A WOMAN IS NOT TO GAVE PATRIMONY ACCORDING

TO THE MEN OF OPINION.

1. "According to the men of Osmund a woman is not to have patrimony, because two rights are not to centre in the same person; those are the patrimony of the husband, and her own. And since she is not to have patrimony, she is not to be given in marriage, except where for once one obtain patrimony; and if she be given, her sons are to have maternity."

2. "Some say, that the sons of no woman are to have an inheritance by maternity, except the sons of one woman and that one is, a woman whom her father and her brothers shall give legally in marriage to an alliant, (there say, that though her relations shall give her in marriage to an alliant; yet, if she be not given by those above named, her sons are not to have patrimony."

3. "The law, nevertheless, says, that there are three women, whose sons are to have property by maternity; one of them is, a woman whom her family shall give legally to an alliant -the second is a woman openly violated by an alliant, and, in consequence of that violation, having a son by the alliant; the law says, that also she is not to have her privilege, nor son have not have his right by maternity. The third is, a woman whom family shall give as an hostage to a foreign country, and, in that condition of an hostage, she have a son by an alliant; that son is entitled to inheritance by maternity."

4. "There is no woman, however, who gives herself up to an alliant, whose sons can have a right by maternity."

that time forward, if she have not had a husband, she is to possess her own property, and is not to remain at her father's platter, unless he shall will it: and the father is not to pay amobyr for his daughter, unless he himself gave her away; because every giver of a woman is to pay her amobyr; or else receive satisfaction from the woman that is given to a man."

## BOCK THE THIRD.

### 1. OF THE NINE ACCESSORIES OF GALANAS

### THIS TREATS.

12. "Whoever is a murderer, the full galanas falls upon him. And thus the galanas is to be shared: one third upon the murderer, and upon his father and mother, if they be living; and of that, two parts upon himself, and the third upon his father and mother; and of the third which falls upon the parents, two pence upon the father, and one upon the mother."

"If the murderer have children, and they be of age liable to pay, he is to pay as much as two of them; two pence upon the brother, and one on the sister. Of the two parts that fall upon his kindred, the third upon the kindred of the murderer's mother, and the two parts upon the kindred of his father: and so the galanas proceeds from maternity to maternity unto the seventh descent, or the seventh maternity: for the children of the first mother are brothers; and the children of the grandmother are first cousins; and the children of the great-grandmother, are second cousins; and the children of the mother in the fourth degree, are third cousins; and the children of the mother in the fifth degree, are fourth cousins; and the children of the mother in the sixth degree, are fifth cousins; and the children of the mother in the seventh degree, are sixth cousins; and galanas goes no further than that. Though only two or three of the degrees should be ascertained, let the galanas be cast upon them; and that which falls not upon them, is to be shared upon the families from whom the father is descended, rating two shares upon the stock."

14. "A woman does not pay a spear penny, for she has not a spear, but her distaff only; neither do clerks pay it: and a woman does not pay galanas; if she make oath that she shall have no children; neither do clerks pay it: and it is not paid by a boy under fourteen years of age."

19. "When a person is killed, saraad is done to him in the first instance, and that saraad does not augment; and, therefore, it is right to pay that saraad before the galanas: and if the man have a wife, let the third of the saraad be given to her, and the two parts be shared among the brothers, the cousins, and the second cousins; and if his father be alive, he is to have as much as two of the brothers; and if his mother be alive, she is to have as much as two sisters: and that is the best form; for they are the several persons who are to pay saraad with him, if he were to do saraad to another. Others say, that after one third is given to the wife, the other two parts are to be mixed with the galanas, and shared among the kindred."

21. "Neither clerks nor women are to have a share of the galanas, since they are not avengers: however, they are to pay for their children; or make an oath that they shall never have any."

23. "A childless woman pays no galanas; and neither does she pay, who has ceased to bear children."

25. "The galanas of the King's wife, his son, his edling, his nephew, and his chief of the household, is one third of the king's galanas: and their saraad is one third of the king's saraad."

26. "The galanas of the king's daughter is half the galanas of her brother: and her saraad is in the same proportion, before she marries."

III. OF THE NINE ACCESSORIES OF FIRE THIS TREATS.

25. "Weaving-women who shall take webs, or other balls under their care, if they should be burnt, they are to pay for them; because they are to keep them against every loss."

XXV. OF CORN DAMAGE THIS TREATS.

41. "The pledge that is given by a wife, the husband is not to nullify; and the pledge given by a husband is not to be nullified by the wife."

CYREITHIAU HYCEL DDA,

AR DDULL DYVED;

THE LAWS OF HOWEL DDA,

ACCORDING TO THE DIMETIAN CODE.

BOOK THE FIRST.

(THE LAWS OF THE COURT.

1. OF THE OFFICERS OF THE COURT.)

3. "The wueen is to have a third from the king of the produce accruing to him from his land; and in like manner, the officers of the queen are to have a third of the produce of the officers of the king."

4. "The wueen is to have a progress, with the maids and youths, among the villians of the king, when the king is absent from his own land."

III. OF SARAAD TO THE QUEEN.

1. "By three means saraad is done to the queen: when her protection is violated; or, when she is struck in anger; or, when a thing is snatched by force out of her hand: the third of the worth of the king's saraad is to be paid to the queen, for her saraad, without gold and without silver."

XI (OF THE STEWARD.)

26. "One pound and half is the ebediw of the steward."

27. "The gobyr of his daughter is one pound."

28. "Her cowyll is three pounds."

29. "Her agweddi is seven pounds."

30. "And, in like manner, the daughters of each of the principal officers."

BOOK THE SECOND.

1. OF THE NINE ACCESSARIES OF MURDER.

14. "Whoever shall confess galanas; he and his kindred shall pay the whole of the saraad and galanas of the person killed; and, in the first place, the murderer shall pay the saraad of the person to the father, the mother, the brothers, and the sisters; and if he was married, the widow is to receive from them the third of the saraad of her husband."

V. THERE ARE NINE PERSONS, EACH OF WHOM IS TO BE BELIEVED IN GIVING HIS TESTIMONY UPON OATH.

7. "The seventh is, a maiden concerning her virginity: if the man to whom she is given shall doubt her, to degrade her privilege, she is to be believed, within her twelfth year: if subsequent to her twelfth year, she is to give her own oath and that of four persons next of kin to her, her father, mother, brother, and sister. If a maid, however, be violated, and the violator say that she was not a maid; the testimony of the maid herself is to be believed, in opposition to him, concerning her virginity."

VIII. (TRIADS.)

22. "There are three saraads of a woman; for one the saraad is to be augmented, for one to be diminished and for one to be entire: the first is, being connected with her against her will, and that is to be paid her with one augmentation, and if she be married, it is to be paid her according to the privilege of her husband; the second is, giving her a kiss against her will, and that is to be diminished by one third to her; the third is, palpando against her will, and that is a full saraad to her."

74. "Three things which cannot be taken from a wife, though she be divorced for her misdeed: her cowyll; her argyvreu; and her wyned-werth, if she had received one for the husband's taking another woman, in opposition to her."

94. "Three thieves who shall escape for an acknowledged theft: a necessitous person, who shall traverse three trevs, and nine houses in each trev, without obtaining either alms or gwestva to relieve him; though he be caught, with stolen eatables in his possession, he is free, by law; and a wife, for stealing jointly with her husband; and a stealer of tame fowls, the law sets him free, only paying to their owner the legal worth of the fowls he takes."

95. "Three cases wherein a wife is to answer, without her husband: the first is, for homicide, committed by her by the act of hand and foot; the second is, for theft, committed by her, unconnected with her husband; the third is, for the title to land in her own right."

XVII. (OF THE WORTH OF LIMBS.)

47. "The saraad of a bondwoman is twelve pence: if she be a servant, the worth of her saraad is twenty-four pence, that is a woman who works at her needle."

XVIII. (OF WOMEN.)

1. "If a man take a wife by gift of kindred, and he desert her before the end of the seven years; let him pay her three pounds, as her agweddi, if she be the daughter of a breyr; and one pound and a half, as her cowyll; and six score pence, as her gobyr: if she be the daughter of taeog, one pound and a half, as her agweddi; six score pence, as her cowyll; and twenty-four pence, as her gobyr."

2. "If, after the seven years, he leave her; let all be shared between them, unless privilege should give precedence to the husband: two parts of the children go to the husband, and the third to the mother; the eldest and the youngest to the father. If they be separated by death, let everything be equally shared between them."

3. "The saraad of a married woman is to be compensated to her according to the privilege of her husband: that is, according to the privilege of the man to whom she may be given."

4. "A man is free to forsake his wife, if she notoriously attach herself to another man; and she is to obtain nothing of her right, excepting the three things which are not to be taken from a woman; and the seducer is to pay to the lawful husband his saraad."

5. "If a wife utter a harsh, or disgraceful word to her husband; let her pay to the husband three kine as camlwrw, for he is her lord; or, let him strike her three blows, with a rod of his cubit length, on any part he may will, excepting her head."

6. "If a man beat his wife without cause, let him pay her saraad to her, according to her privilege."

7. "If a woman desert her husband's bed without cause; let her pay him three kine as calmwrw, before he takes her back."

8. "If a man separate from his lawful wife, she being pregnant; the time is to be reckoned, from the day of their separation, for her to rear the issue she may be pregnant with; for, according to this law, the mother is to nurse the issue during a year and a half; and after that the mother is not to nurse it any more. If she be found to be a violated maid, without denial, her smock is to be cut before and behind; and there the man is to give her a steer, with its tail greased; and, if she be able to hold it by its tail, let her take it for her agweddi."

9. "If a married man be killed, his saraad is to be first paid, and then his worth: the third of his saraad, however, the wife is to have."

10. "If the daughter of a breyr go with a man clandestinely, with her own consent; when deserted, her agweddi is to be six bullocks, whose horns are of equal length with their ears: to the daughter of a taeog, in a similar case, three bullocks, with their horns and ears of equal length, are to be paid."

11. "The wife of a free man can give her mantle, her shift, her shoes, her headcloth, her meal, her cheese, her butter and her milk, without the device of her husband; and she can lend all the furniture. The wife of a taeog is to give nothing, without the permission of her husband, but her head-gear; and she can lend nothing, but her sieve; and that only for the distance her call may be heard, with her foot on her threshold."

12. "A woman is to have from the father of the child for rearing it, for so long a period as before described, a coat of the value of four pence; a choice cow; a pan of the value of a penny halfpenny; and a car-load of the best corn that shall grow upon the father's land: and that pertains to the taeogs."

13. "The son of a boneddig is to be reared in this manner: the mother of the boy originally bears him nine months in her womb; and during three months after he is born, she is to nurse him; and that is to be reckoned for a year to her: after that the father is to rear him, and procure for him all his necessaries: first, he is to give a sheep, with her fleece and her lamb; and then a caul of tallow, or a penny; and an iron pan, or four legal pence; and a menaid of wheat to make pap for him; and a car-load, drawn by two oxen, of fuel; and two ells of white or party-coloured cloth, to put around the child; and a milch cow, with her calf; and three car-loads of wheat, barley, and oats; and three car-loads of fuel; if the mother will, she shall have the whole; if she do not will, let it be given to another."

14. "If a pure virgin go away clandestinely, without the advice of her kindred; her father can bring her back from her husband, against her will, and she loses nothing of her right from him who took her away; neither does her father pay her amobyr to the lord."

15. "If a woman, however, go away clandestinely, against the will of her kindred, no one can bring her back, against her will, from the man: according to the place of her abode, her amobyr is to be paid."

16. "A woman who shall be taken away clandestinely, and who makes no contract, in the presence of witnesses, for obtaining her full right; is to have, according to the men of Gwynedd, only three bullocks; according to the men of the South, she formerly obtained her agweddi in full, the same as a woman whom her kindred and given to a man."

17. "Whoever shall carry away a maid clandestinely, and the maid say: 'How much wilt thou give me?' And he then say: 'I will give thee so much;' and confirm that on his faith, and over relics: if he deny after that, let her take the relics, and swear to his having promised her so much: and, in that case, he can say nothing in opposition to her; for her own testimony is to be credited in that matter."

18. "Whoever shall commit a rape upon a woman is to pay her amobyr, and her dirwy, to the lord; and to the woman he is to pay her saraad, her agweddi, and her dilysrwydd. If the man will to deny it, and the woman support it against him, prehendat penem ejus manu sinistra, et dextra reliquiis imposita, and let her swear to his having committed a rape upon her; and thus he cannot withhold any of her right."

21. "For three causes, if a woman desert her husband, she is not to lose her agweddi: for leprosy; want of connexion; and bad breath."

22. "Three times a woman is to obtain her wyneb-werth: the first time, she is to have six score pence; the second time, one pound; the third time, she can leave her husband, and depart with all her due: but if she endure beyond the third time, she is not to obtain her wyneb-werth."

23. "If a maiden do not settle the uses of her cowyll before rising in the morning out of bed from her husband; it is to remain in common from that time forward."

25. "Three oaths a wife is to give to a husband: When first scandalized, she is to give the oaths of seven women; upon the second scandal, the oaths of fourteen women; upon the third scandal, the oaths of fifty women: if there be any kind of foundation for the scandal."

26. "If a woman be given to a man, the man is to be responsible for her gwaddol until the end of the seven years: and, if she attain three nights of the seventh year, the wife is to have half of the entire property, when they separate; and the property is to be shared in this manner: the husband is to have the swine, and the wife the sheep. Afterwards, the wife is to share, and the husband is to choose; excepting that the household utensils are to be thus shared: all the milk vessels to the wife, saving one pail, the dishes, saving one dish; and the one pail, and the one dish, the husband is to have: the husband, likewise, is to have the car, and one of the teams; all the liquor vessels; and all the tubs; and what shall be under them of the bed clothes; what shall be upon them of the bed clothes belong to the wife: if the husband, upon that occasion, take another wife, he must send the first-mentioned bed clothes to the wife who is rejected. The husband is to have the boiler, the guilt or the plaid, and the bolster; the coulter, the fuel-hatchet, the auger, the small ager, the iron hob, all the hooks save one, and the baking-girdle. The wife is to have the trivet, the pan, the broad axe, the sieve, the plough-share, with one hook; the flax and flaxseed, the wool, and all the trinkets, excepting gold or silver; these, if there be any, are to be equally shared between them: and so the linen and woollen webs are to be shared between them. The husband is to have the barn, with the corn that may be on the earth, or in the earth; the fowls, and the cat; and, if there be others, the wife is to have them. The wife is to have the flesh, in brine and out of brine; and the like as

16. "A woman who shall be taken away clandestinely, and who makes no contract, in the presence of witnesses, for obtaining her full right is to have, according to the use of Jayneil, only three hundred pennies in full, the same as a woman when her kindred and given to a man."

17. "Whoever shall carry away a maid clandestinely, and the maid says 'How much will thou give me?' And he then says 'I will give thee so much;' and confirm that on his faith, and over relics: if he deny after that, let her have the penance, and never to his having promised her so much; and, in that case, he can say nothing in opposition to her for her own territory is to be credited in that matter."

18. "Whoever shall commit a rape upon a woman is to pay her amount, her dire, to the lord: and to the woman he is to pay her amends, her amends, and her dignity. If the man will to deny it, and the woman support it against him, produce then also main witness, at derire relatives keposit, and let her swear to his having committed a rape upon her; and thus he cannot withhold any of her rights."

19. "For three causes, if a woman leave her husband, she is not to lose her amends: for leprosy, want of connexion, and bad breath."

20. "Three times a woman is to obtain her dower-worth the first time, she is to have six score pennies the second time, one pound the third time, she can leave her husband, and depart with all her due: but if she endure beyond the third time, she is not to obtain her dower-worth."

21. "If a maiden do not settle the mese of her cowyll before riding in the morning out of bed from her husband it is to remain in common from that time forward."

22. "Three oaths a wife is to give to a husband. When first wounded, she is to give the oaths of seven women upon the second wounds, the oaths of fourteen women upon the third wounds, the oaths of fifty women if there be any wish of foundation for the wounds."

23. "If a woman be given to a man, the man is to be responsible for cradled until the end of the seven years: and, if the attain three nights of its seventh year, the wife is to have half of the entire property, when they separate: and the property is to be shared in this manner: the husband is to have the swine, and the wife the sheep. Afterwards, the wife is to share, and the husband is to choose, excepting that the household utensils are to be thus shared: all the silk vessels to the wife, saving one pail, the blade, saving one iron and the one pail, and the one iron, the husband is to have: the bolster, likewise, is to have the oat, and of the tenant all the liquor vessels: and all the tubs: and what shall be under them of the bed clothes: what shall be upon them of the bed clothes belong to the wife: if the husband, upon that occasion, take another wife, he must restore the first-mentioned bed clothes to the wife who is rejected. The husband is to have the boiler, the grill or the pleil, and the coulter, the flesh-hooks, the augur, the small axe, the iron bar, all the looks save one, and the table-cloth. The wife is to have the trivet, the pot, the frying pan, the stove, the plough-share, with one team: the flax and flaxseed, the wool, and all the trinkets, excepting gold or silver, these, if there be any, are to be equally shared between them: and so the linen and woollen were are to be shared thereon. The husband is to have the lamb, with the cock and, if there be others, the wife is to have the ewes, and the cat: and, if there be others, the wife is to have the fleet. In fruit and nut of fruit and the like as

to the cheese, in brine and out of brine. The husband is to have the flesh in cut; and all the cheese that is raised up; all the vessels of butter in cut; the bacon in cut; and the cheese in cut. The wife is to have as much meal as she can bear between her hands, above her knees, from the store-room to the house."

27. "Each is to have his own clothes; only that the mantles are to be shared."

28. "If a man deserts his wife unlawfully, and takes another; the rejected wife is to remain in her house until the end of the ninth day; and then, if she be suffered to depart entirely from her husband, everything belonging to her is to go in the first place out of the house; and then she is to go last out of the house, after all her property: after that, on bringing the other into the house, he is to give 'dilysdawd' to the first wife; because no man, by law, is to have two wives."

30. "If a wife deny her adultery, let her give the oaths of fifty women; and, in like manner, the husband, who shall deny her adultery, is to give the oaths of fifty men: and this raith is to be given for the three strong scandals."

31. "If a wife be guilty of an odious deed along with another man, whether by kiss, out coitu, aut polpando, the husband can repudiate her; and she is to forfeit the whole of her right for giving a kiss, without either of the others."

40. "The gobyr of the king's daughter is six pounds; and it is to be paid to the mother: for her cowyll is to consist of land, of the extent her husband shall see to be right."

41. "Her agweddi is to be fourteen pounds."

46. "The gobyr of a female alltud is twenty-four pence."

48. "If a woman be given to a man, and her amobyr be paid, and after that she be affiliated to another father, and the lord of the father she is affiliated to willeth an amobyr on account of the husband she had before being affiliated to the new father, and she being a worthless daughter; he that requires her amobyr is not to have it for three causes: that a woman owes but one amobyr; the second cause is, that she did not marry after affiliation to her new father; the third cause is, whatever she did during her abode with a former stock is not to constitute a claim or surclaim against her in the stock she enters; unless she did not pay her amobyr to the lord of her former father, for the union is not complete unless the amobyr be paid, and therefore it is right to finish and unite, and pay the amobyr to the lord of the new father."

49. "A wife never pays but one amobyr by law, and she pays it from the privilege of the land she originates from; and she alone is to pay it, unless she be given by her father, or her brother, or by one of her kindred, to a husband; and, if he shall not take surety for her amobyr, he is to pay it himself, as he omitted taking surety. Whoever shall violate a woman let him pay her amobyr. The cause that a woman pays but one amobyr is, that she never returns to the privilege of the lord of the land, nor to the privilege of her kindred, but acquires the privilege of the husband she obtains."

50. "Of a virgin-wife: that is a woman given to a man, and she a virgin, the marriage being unconsummated: if she be violated, some say that the whole is not due, others say it is; we, however, say, that whoever shall violate her virginity is to pay her her cowyll."

53. "Two women whose privilege does not progress with the privilege of their husbands: these are, a bondwoman although she may have children by a Cymro, or may be taken clandestinely by a Cymro, the owner of the bondwoman can recover her when he will, as he may his animal; and therefore the privilege of bondage is stronger than that of concubinage; if the man who shall have taken her shall marry her without the consent of the uchelwr the privilege of marriage is stronger than that of bondage; from thenceforward she is to remain on the privilege of the man she shall marry, and her husband is to pay her legal worth to the lord, or a bondwoman equal to her: the second is, a married female, separated from her husband, either during his life, or by his death, and then renouncing the world, and becoming a nun or under other vows; the law says, that if the suffer saraad she does not rank according to the privilege of her former husband, but according to that of the church."

XXIII. (OF LANDED PROPERTY.)

7. "If an owner of land have no other heir than a daughter; the daughter is to be heiress to the whole land."

CYREITHIAU HYCEL DDA,

AR DDULL GCENT;

THE LAWS OF HOWEL DDA,

ACCORDING TO THE GWENTIAN CODE.

BOOK THE FIRST.

XXXII. (THE PRIVILEGE OF THE CHAMBERMAID.)

1. "The chambermaid has all the queen's clothes throughout the year, except the garment in which the queen does penance during Lent."

2. "She has her land free."

3. "And her horse, in attendance, from the queen."

4. "To her belong the queen's saddle, her old bridles, all her covering, and her spurs when discarded."

5. "She has a share of the gwestva silver."

BOOK THE SECOND.

VII. A WOUND.

16. "The saraad of a bond female is twelve pence in value."

17. "For the saraad of a bond female, who neither works at the spade, nor at the quern, twenty-four pence is paid."

VIII. THUS DISPERSED GALANAS IS SHARED.

16. "One person to whom a spear penny is paid, and who pays to no one; a woman who shall commit murder."

XXIX. GOBYRS OF WOMEN.

1. "Seven pounds is the gobyr of the king's daughter, and is paid to the mother; and the husband pays the cowyll; for land is paid to her."

2. "Twenty-four pounds is her agweddi."

3. "If the daughter of a breyr go away with a man clandestinely, without gift of kindred; when deserted, her agweddi is six bullocks, with horns and ears of equal length."

4. "The daughter of a taeog has three bullocks as her agweddi."

5. "If a man take a wife, by gift of kindred, and leave her before the end of seven years; let him pay her agweddi to her."

6. "If she be a breyr's daughter, her agweddi is three pounds."

7. "One pound and a half is her cowyll."

8. "Six score pence is her gobyr."

9. "If she be a taeog's daughter, her agweddi is one pound and a half."

10. "Six score pence for her cowyll."

11. "Twenty-four pence for her gobyr."

12. "If she be left after the end of seven years, let there be an equal sharing between them; unless the privilege of the husband entitle him to more."

13. "Two thirds of the children come to the husband; to wit, the eldest and the youngest; and the third to the mother."

14. "If they be separated by death, everything to be equally shared between them."

15. "The saraad of a married woman is paid her according to the privilege of her husband."

16. "When a married man shall be murderer, his saraad is first paid; and there his galanas; for the wife has the third of the saraad, and she has no part of the galanas."

17. "The wife of a privileged man can lend her shift, her mantle, her head-cloth, and her shoes, without the consent of her husband; and may give her food and drink; and lend the furniture of the house unrestrictedly."

18. "The wife of a taeog cannot give anything, nor lend it, without the consent of her husband, excepting her bonnet, her sieve, and her riddle; and that only to the distance she can be heard calling, with her foot upon the threshold."

19. "If a pure maiden go away clandestinely, without the consent of kindred, her father can bring her back against her will, from her husband; and he is not to pay her amobyr to the lord."

20. "If a woman, however, go away clandestinely, no one can bring her back against her will, from her husband."

21. "According to where her home may be, her amobyr is paid."

22. "Whoever shall commit a rape upon a woman, let him pay her gobyr to the lord; and her dowry, and her agweddi, and her dilysdawd, and her saraad, he pays to the woman: and, if she be a maid, let him pay her cowyll."

23. "If the man deny the violation, and the woman persevere with charge; let her take the relics in her right hand, and penem ejus in manu sinistra; and let her swear to his having violated her: and so she loses nothing of her right."

3. "If the daughter of a freer so wed with a man slanderously, without gift of kindred when deserted, her eyewall is six fathoms, with horns and nary of equal length."

4. "The daughter of a tanner bee three hillocks as her eyewall."

5. "If a man take a wife, by gift of kindred, and leave her before the end of seven years let him pay restraint to her."

6. "If she be a freyre's daughter, her eyewall is thirty pecunia."

7. "The period and a half is her eyewall."

8. "Six score pence is her gofyr."

9. "If she be a tanner's daughter, her eyewall is one period and a half."

10. "Six score pence for her teeth."

11. "Twenty-four pence for her gofyr."

12. "If she be left after the end of seven years, let there be an equal sharing between them unless the privileges of the greatest nutrix him be more."

13. "Two thirds of the children come to the benefit to it, the eldest and the youngest; and the third to the mother."

14. "If they be separated by death, everything is by equally shared between them."

15. "The parcel of a married woman is paid for according to the privileges of her husband."

16. "When a married man shall be murdered, his parent is first paid; and then his pulsary for the wife has the third of the estate, and the has to part of the balance."

17. "The wife of a privileged man land her skill, her mantle, her headcloth, and her shoes, without the consent of her husband and may give her food and drink; and lend the furniture of the house unrestrictedly."

18. "The wife of a tanner cause give anything, nor lend it, without the consent of her husband, excepting her tenour, for alms, and for eldest and that only to the distance she can be heard calling, with her face upon the threshold."

19. "If a pure maiden go away clandestinely, without the consent of kindred, her father can bring her back against her will, from her husband; and be it not in his power to the help."

20. "If a woman, however, go away clandestinely, no one can bring her back against her will, from her husband."

21. "According to whats her house may be, her mantle is worth."

22. "However shall commit a rape upon a woman, let him pay sixty to the lord, and her tenour, and for assault, and for illegal carnal, be paye to the vocant, and, if she be a maid, let him pay for compensation."

23. "If the man deny the villain, and the woman confess, let her have the choice; let her take the pollen to her right hand, not pence she is more eligible; and let her place to his wanting vindicated her; and be his lapse rotating of her right."

24. "A woman who shall be violated, if she know not who has violated her, is not to pay amobyr; since the king preserved her not from violation, he loses her amobyr: and, if the woman be doubted in that respect, let her give her oath, that she knows not who has violated her; and that she was violated as aforesaid."

26. "From three causes a woman loses not her agweddi, although she may leave her husband: to wit, on account of leprosy, bad breath; and default of connexion."

27. "Three things of which a woman is not to be deprived, although she be abandoned for her crime: her cowyll; her argyvreu; and wyneb-werth, when her husband shall be connected with another woman."

29. "If a maiden do not exercise her will as to the cowyll, before the husband rise up in the morning, it is to be between them."

30. "Three times a wife has her wyneb-werth from her husband, when he shall be connected with another woman; and, if she endure beyond that, she has nothing."

31. "If a mature maid be given to a man, and the man say she was not a maid; let the maid swear, with four persons nearest to herself in worth, that she was not a woman: the persons are to be, herself, her father, her mother, her brother, and her sister."

32. "Three oaths a woman gives to a husband, when scandalized: first, the oaths of seven women; and, on the second scandal, the oaths of fourteen women; and, on the third scandal, the oaths of fifty women: and, if he endure beyond that, he has nothing."

35. "The gobyr of a female alltud is twenty-four pence."

38. "If a husband and wife separate before the end of the seventh years, the furniture is thus shared between them. To the husband belonged the bed-clothes between him and the floor: and to the wife belongs the coverlid. The corn belongs to the husband: and the made flour belongs to the wife. To the husband belong the plaid, the winnowing-sheet, the dormitory bolster, the coulter, the fuel axe, the hand axe, and all the hooks but one. To the wife belong the broad axe, the share, the spade, the one hook, and the medium auger: and all the irons belong to the husband, those except. To the wife belong the ox car, the yokes, and all the milk vessels but one pail, and all the dishes but one dish, which belong to the husband. All the butter belongs to the wife but one vessel, which belongs to the husband: and, if there be lumps of butter, the husband has one: to the wife belong all the unhung meat, salted and unsalted, and all the cheese in brine and unsalted. To the husband belong all the hung meat and cheese."

39. "It belongs to the wife to stop in her house, waiting her share of the property, until the end of the ninth day."

## XXXIX. (TRIADS.)

1. "There are three women against whose issue there are to be no pleas respecting the inheritance of their mother: a woman who shall be given in pledge for land, and who bears a son whilst she remains as a pledge; and a woman who shall be given, with consent of kindred, to an alltud; and a woman whose son shall avenge a man of his mother's kindred, and lose his patrimony on account of that crime; with whom there ought to be no disputing concerning the inheritance of his mother."

3. "There are three whose car-removals are without return: a doubted son after he shall have once been rejected by a kindred; a man after he shall have once been ejected from landed property; such ought

34. "A woman who shall be violated, if she know not who be violated her, is not to lay amongst alone the kilf preserved her not from violation. be loose her amongst; and, if the woman be doubted in that respect, let her give her oath, that she know not who has violated her and that she was violated as aforesaid."

35. "Then three coupon a woman have not her oppose, although she may have her husband: to wit, on account of leprosy, and breath; and default of connexion."

37. "When three coupon a woman is not to be deprived, although she is abandoned for her crimes, her cowpit her archives; and wheel-work, when her husband shall be connected with another woman."

38. "If a sultan do not exercise her will as to the cowpit, before the husband rise up in the morning, it is to be between them."

39. "If a sultan do not exercise her will as to the cowpit, before he shall be connected with another woman; and, if she endure beyond that, she has nothing."

41. "If a nature shall be given to a nun, and she can say she was not a maid; let the maid-sweet, with four persons nearest to herself in kirk, that she was not a woman. The persons are to be, herself, her father, her mother, her brother, and her sister."

32. "Three oaths a woman gives to a husband, when-essentialest: first, the oaths of seven-woman; and, on the second scandal, the oaths of fourteen women; and, on the third scandal, the oaths of fifty women: and, if be endure beyond that, he has nothing."

33. "The wifyr of a female sultan is twenty-four pence."

38. "If a husband and wife separate before the end of the seventh years, the furniture is thus shared between them. To the husband belongs the bed-clothes between him and the floor: and to the wife belongs the coverlid. The corn belongs to the husband: and the meal flour belongs to the wife. To the husband belong the plaid, the winnowing-sheet, the domestory joister, the coulter, the fuel axe, the hand axe, and all the books but one. To the wife belong the fixed axe, the share, the spade, the one book, and the kneading engine: and all the irons belong to the husband, those except. To the wife belong the ox cart, the yoke, and all the milk vessels but one pail, and all the dishes but one dish, which belong to the husband. All the butter belongs to the wife but one vessel, which belongs to the husband. And it shall be lawful for butter, the husband has once to the wife belong all the working coat, salted and unsalted, and all the cheese in Iruna and unsalted. To the husband belong all the [illegible] week and cheese."

39. "It belongs to the wife to step in her bower, waiting her share of the property, until the end of the night day."

## XXXIX. (THIRTY.)

1. "There are three women against whose issue there are to be no pleas respecting the inheritance of their mother: a woman who shall be given in pledge for land, and who bears a son whilst the remains as a pledge; and a woman who shall be given with consent of kindred, to an alienat; and a woman who shall accept a man of his mother's kindred, and lose his patrimony on account of that orient with whom there ought to be disputing concerning the inheritance of his mother."

2. "There are three whose con-vocals are without reason: a convicted man after he shall have once been released from jail; a man after he shall have once been elected from jail-deputy; such ought

not to obtain land afterwards; and a woman after she shall have once been expelled from her bed lawfully; she is not ever to come back to that bed again, according to law."

43. "Three persons who are entitled to an advocate for them in court; a woman; an alltud not knowing the language; and one of imperfect utterance: the person to choose the advocate is the lord."

XII. HERETOFORE WE HAVE TREATED OF LAW TRIADS,

NOW WE TREAT OF THE NINTH DAYS.

10. "There is a period to the ninth day for a wife to wait for her share of property in her house on separating from her husband."

CYVREITHIAU AMRYVAL,

O AMRYO LYVRAU;

ANOMALOUS LAWS,

FROM VARIOUS MSS.

BOOK THE FOURTH.

II. EBEDIWS.

18. "No woman, in any case, is to pay an amobyr, but once, by law; and that she pays according to the privilege of the land upon which she was born: and no person is to pay it for her; unless her father, or her brothers, or one of her kindred, give her without taking surety for the amobyr; in that case he must pay it, as he did not take surety for it."

19. "Whoever shall violate a woman, let him pay her amobyr; for a woman pays only one amobyr; as she never returns to the privilege of the lord of that land, nor to the privilege of her kindred, but assumes the privilege of the man with whom she has gone."

21. "Three females who owe no amobyr: the daughter of an edling; the daughter of a king; and the daughter of a chief of the household: because their fathers owe no ebediw; except their horses, their favourite dogs, their hawks, and their arms: the daughter of a king owes none, as there is no one who can demand it: for a king is not to receive the amobyr of his own daughter."

23. "The amobyr of the daughters of a chief of kindred, of a steward, and of a maer conghellor, is one pound each."

26. "The amobyr of the daughter of every chief of song, and his own ebediw, when invested by the lord with the title of chief of song, or office, is six score pence."

IV. (OF SUITS.)

2. "A maiden wife is one who has been betrothed to a husband, she yet remaining a maid, and without consummation. If a rape is committed upon her, some say, that she is not entitled to cowyll; others say, that she is entitled to it: we, however, say, that whoever shall violate the virginity of a woman is to pay to her her cowyll."

3. "Whoever shall occasion an abandoned female to become pregnant, it is not incumbent upon her to nurse the offspring longer than the swaddling month: for, since she had not had the support of the man, the law does not consider it right for her to be in want on his account."

not to obtain land afterwards; and a woman after she shall have once been expelled from her husband's she is not ever to come back to that husband according to law."

9. "Three persons who are entitled to an advocate for them in court: a woman; an alien not knowing the language; and one of imperfect understanding the person to choose the advocate is the lord."

XII. HENCEFORTH WE MEAN TREATED OF LAW CRIME.

HOW WE TREAT OF THE NINTH DATE.

10. "There is a period to the ninth day for a wife to wait for her share of property in her house on separating from her husband."

CUSTOMARY ARRIVAL.

O AMEND LATHAN;

AND ALSO LAWS.

FROM VARIOUS CAS.

BOOK THE NORTH.

II. ENACTED.

12. "No woman, in any case, is to pay an anchory, but once, by land and that she pays according to the privilege of the land upon which she was born: and no person is to pay it for her; unless her father, or her brother, or one of her kindred, give for without taking security for the anchory: in that case he must pay it, as he did not take security for it."

13. "Whoever shall violate a woman, let him pay for her anchory: for a woman pays only one anchory; as she never returns to the privilege of the land of that land, nor to the privilege of her kindred, but assumes the privileges of the man with whom she has gone."

21. "Three females who are no anchory: the daughter of an officer; the daughter of a king; and the daughter of a chief of the household: because their fathers are no chiefs; except their parents, their favorite sons, their sons, and their wives: the daughter of a king does not, she is no one who can demand it: for a king is not to receive the anchory of his own daughter."

22. "The anchory of the daughters of a chief of kindred, of a steward, and of a mere confidant, is one pound each."

30. "The anchory of the daughter of every chief of song, and his own cheeks, when invested by the lord with the title of chief of song, or office, is six score pence."

IX. (OF SUITS.)

3. "A widow wife is one who has been betrothed to a husband, who not receiving a maid, and without consummation. If a man is convicted upon her, some say, that she is not entitled to cupil; others say, that she is entitled to it: we, however, say, that whoever shall violate the virginity of a woman is to pay to her her cupil."

5. "Whoever shall occasion an abandoned female to become pregnant, it is not incumbent upon her to nurse the offspring longer than the weanling month: for, since she had not had the support of the man, the law does not consider it right for her to be wet as his account."

4. "Some say, that the surety, which a woman gives, is no surety: we say, that the surety which she may give, is a surety; although no woman can be a surety herself. When a woman shall deny a surety, men must deny it with her; for it is a man that denies."

## BOOK THE FIFTH.

## (CASUALTIES.

### II. (OF CHOOSING A KING.)

19. "If a person be charged with burning; or pillaging; or public attack, the number to constitute which is nine persons; or spoiling; or killing a person in battle; or way-lating; or one of the three scandals as to a woman, which are, the finding her coming out of a wood, or out of an empty house, or under the same cloak; or violence: to deny every one of these, there must be the oaths of fifty men, for a man, and the like of women, for a woman."

55. "If a woman kill a person, let her be criminal, as if a man; and she is to have a spear penny, unless he have property wherewith to pay: and that is the only person who is to receive a spear penny, and is not to pay one."

58. "If the son of an alltud by a boneddig woman kill a person, his father and mother being alive, and galanas fall upon him; let the two parts be upon the mother, and the third upon the father: for, she is to be in the place of a father."

59. "If a daughter be denied by a kindred, and she be betrothed to a husband, and there be a contention respecting her amobyr; the law says, that is the king who is entitled to it, for it is the king's waif; and, if the issue be a Welsh female, her amobyr is to be equal to that of the daughter of an innate boneddig, that is, four-score pence. If her mother be an alltud female, her amobyr is to be equal to the amobyr of the daughter of an alltud, that is, twenty-four pence. And so the ebediw of a son that is denied is eated, unless he increase in privilege, so that his ebediw shall be augmented."

79. "If an alltud, having a wife with agweddi, seek to part from his lord, and she willeth that her argyvreu should not be shared; some say, that she is to separate from her husband, and to go, with what belongs to her, free and secure: the law, however, says, that she is not to separate from the husband, but for an unlawful act done by him, and that it is not unlawful for him to give his lord his due; and, on that account, let what is in their possession be equally shared."

100. "If a woman be given to a man and after that she be affiliated to another father, and the lord of the father, to whom she is affiliated, demand her amobyr on account of the marriage she had entered into, before she was affiliated to her new father, she being a daughter to his man, and that he had not obtained her amobyr; the law decides, that he is not entitled to it, for two causes: one is, that only one amobyr is due from a woman, and she has paid that; the second is, that she has not married since she was affiliated to her new father; and what thing soever she may have done among the family she was formerly in, neither claim, nor sur-claim is to follow her into the other family into which she has come. But, if she have not paid her amobyr to the lord of her former father, let her pay to the lord of the new father; since the nuptials are not complete until her amobyr shall be paid."

120. "If it be supposed that the privilege of a woman who may be abducted, or the privilege of a woman slept with, from three nights

4. "Does any, that the dowry, which a woman gives, is so strictly
no way, that the dowry which she may give, is a surety, although no woman
can be a surety herself. When a woman shall buy a surety, she must buy
it with part for it is a sum that denies."

BOOK THE FIFTH.

(CAPTIVATING.

II. (OF CHOOSING A KING.)

12. "If a person be charged with burglary or pilfering or puttie
attack, the number to constitute which is nine persons or spoiling or
killing a person in battle or manslaying or one of the three enemie
ne to a woman, which are, the finding her coming out of a wood, or out
if an empty house, or under the same clothes or relations. In any event
one of these, there must be the oaths of fifty men for a man, and the
like of women, for a woman."

13. "If a woman kill a person, let her be trialed, as if a man
and she is to have a equal party, unless he have property wherewith to
pay. And that is the only person who is to receive a equal party, and
is not to pay one."

14. "If the sons of an alliud by a lowship woman kill a person, his
mother and mother being alive, and quarrels fall upon him; let the two parts
be upon the mother, and the third upon the father. For, he is to be in
the place of a father."

15. "If a daughter be denied by a diadred, and she be tortured to
a husband, and there be a contention respecting her property the law says,
that if the king she is entitled to it, for it is the king's duty and,
if the lawe be a Welsh female, her property is to be equal to that of the
daughter of an Irante possible, that is, four score pence. If her mother
be an alliud female, her property is to be equal to the property of the daughter
of an alliud, that is, twenty-four pecora. And so the cradle of a man that
is denied is dated, unless he increase in privilege, so that his cradle
shall be augmented."

16. "If an alliud, having a wife with property, come to part from
his lord, and the alliud that her property should not be shared from some
way, that she is to separate from her husband, and to go, with what be-
longs to her, free and secure: the law, however, says, that she is not
to separate from the husband, but for no unlawful [illegible] by him, and
that it is not unlawful for him to give his lord his lord and, or that
account, let what is in their possession be equally shared."

17. "If a woman be given to a man and after that she be ALLIANCED
to another father, and the lord of the father, to whom she is alliated,
demand her money on account of the marriage for the daughter into future
she was alliated to be new father, she being a daughter to his own,
and that be not obtained her money: the law decides, that he is not
entitled to it, for two causes: one is, that only one money is due from
a woman, and she has paid that: the second is, that she was not married
where she was alliated to her new father: and what other money ever
may have done round the family she was formerly in, neither claim, nor
convenable is to follow her into the other family into which she now goes.
But, if she have not paid her money to the lord of her former father,
let her pay to the lord of the new father since the nuptials are not
complete until her money shall be paid."

18. "If it is supposed that the privilege of a woman who may be
abducted, or the privilege of a woman slept with, from three eights

onward is not to follow the privilege of the man, because there was not gift of kindred respecting her; and on that account she is supposed to be on the privilege of her kindred; the law says, that after a woman has acquired agweddi, her privilege is to merge in the privilege of the man from whom she acquires agweddi; and that she cannot leave him, unless she be minded to lose her agweddi; and that he too cannot put her away, but with payment of her agweddi. The agweddi of every wife of that kindis, three bullocks with horns and ears of equal length: and, as the law says, the privilege of those wives accords with the privilege of their husbands."

148. "If a wife speak an ireful word to her husband; such as wishing drivel upon his beard, or dirt in his teeth, or call him a cur; she is to pay him three kine camlwrw, for he is lord over her: or, if she like it better, to be struck three strokes with a rod of the length of the fore arm of her husband, and of the thickness of his long finger, and that wheresoever he may will, excepting her head."

BOOK THE SIXTH.

(CASUALTIES.)

2. "If a man take a woman clandestinely, and keep her with him, without doing her right, until the end of seven days; until the end of the year he is not to do her right; then, however, she is to have the whole of her right."

27. "If a woman build upon the land of a patrimony without hindrance, and be seated on the land a year and a day with property, and mind to leave the land; she is to pay the law of the pale of a gwaesavwr: and so every person without contract who shall be seated a year and a day upon another person's land."

41. "These persons are lawfully to be certain witnesses in the session of the lord, or the person who may be in his place: the judge and the two elders who shall be on each side of the king or lord. Whoever engage in law in the presence of those persons, and the two parties testify to them of proceedings done before them after the parties shall have spoken, and one of the parties seek to object to them, they cannot, for there is no objection concerning their judgment with a stranger; for every person, in law, is to be in his presence and theirs, the witnesses spoken of: and a husband and wife; and free and bond: and they are certain witnesses as to what they do to restore the right; and, if they be doubted, let every one of them be put to the relic except the lord."

BOOK THE SEVENTH.

(PLEADING.)

12. "To evidences there are only five objections: enmity, and woman-feud, which stand as one objection; and nearer affinity; and land-feud, or violence concerning land; and a husband against a wife, and a wife against a husband; and a Cymro against an alltud, and an alltud against a Cymro."

BOOK THE EIGHTH.

(PLEADING.)

XI. (MISCELLANEOUS.)

2. "According to the law of Howel, the testimony of a husband is not to be credited as a wife, nor that of a wife as to a husband; for, as every wife has a third with her husband, she is not to be credited as to him: for the third is not to be credited against the two parts."

ceased is not to follow the privilege of the plea; because there are not
gift of minded restoring part and on that account she is supposed to
to on the privilege of her rightful the law says, that after a woman has
acquired property, her privilege is to marry. In the privilege of the man
rice when she acquires property and that he cannot leave him, unless she
be elected to lose her property and that he too cannot put her away, but
with payment of her property. The property of every wife of that state,
three thirteen with horns and pair of equal length; and, as the law says,
the privilege of those WIVES WHERE with the privilege of their husbands."

## BOOK THE SIXTH.

### (CAUSALITIES.)

1. "If a man take a woman clandestinely, and keep her with him,
without doing her right, until the end of seven days; in that case, she is to have the
whole of her right."

2. "If a woman build upon the land of a person without distance,
and be seated on the land a year and a day with property, and glad to leave
the land; she is to pay the law of the pais of possession, and to every
person at their contract who shall be seated a year and a day upon another
person's land."

3. "There persons are lawfully to be called witnesses to the
session of the land, or the person who may be in its place: the judge and
the two elders who shall be on each side of the king or lord. Whatever en-
gage in law is the presence of those persons, and the two portion testify
to them of proceedings done before them after the portion shall have elapsed,
and one of the parties seek to object to them, they cannot, for there is
no objection concerning their judgment with a stranger for every person,
in law, is to be in his presence and theirs, the witnesses spoken of; and
a husband and wife and free and bonds: necessity are certain witnesses as
to what they do to restore the right; and if they be hostile, let every
one of them be put to the ratio except the lord."

### BOOK THE SEVENTH.

### (PLEADING.)

12. "No evidence there are only five objectionable: enmity, and
near-kind, which stand as one objection; and nearer affinity and lands
land, or violence concerning land and a burland against a wife, and a
wife against a husband and a Cymro against an Alfred, and an Alfred
against a Cymro."

### BOOK THE EIGHTH.

### (PLEADING.)

### XI. (MISCELLANEOUS.)

3. "According to the law of Hywel, the testimony of a husband
is not to be credited as a wife, nor that of a wife as to a husband for,
as every wife has a right with her husband, she is not to be credited as
to that for the third is not to be credited against the parts."

8. "A son born to an unmarried woman, is not to be affiliated until the end of fourteen years, unless brought by his mother when born to the door of the church, and before the altar; unless so affiliated, let her affiliate him, along with six women nearest to her, at the end of fourteen years, and so to be taken; and she shall have half her expenses until then from the man."

## BOOK THE NINTH.

### (PLEADINGS.)

6. "Then the plaintiff himself is to say, that a thief is not entitled to an advocate, whilst there is a charge of theft against him, for which he is liable to lose a limb, or his life; for, unavailing is what anyone, excepting himself, may say in his behalf, before he becomes bound in law. And thereupon the judge must decide, that he is not to have an advocate, for a suit whereby he may lose a limb, or his life: but, there are three persons, who are entitled to an advocate: a woman; a foreigner ignorant of the language; and one of imperfect utterance."

19. "And, in the first place, let him give his own oath, to seeing its rearing, and knowing its birth, as his own property, and that nothing ever separated it from him; and, unless he makes his oath, nothing avails him. Afterwards, let the first he named be first sworn; and let him swear to knowing of its birth, and seeing its rearing, in the possession of the man, naming him, and that it was never separated from him. And those guardians are to be of the same privilege with himself. In like manner, let the second swear. And, if they do not so swear, he shall be condemned. And two are sufficient, if they be respectable: and his guardians cannot be objected to, if they be respectable, and of the same rank with himself. There is no disrespectability, but by being an alltud: and by being the three persons whose word is not truth, whatever they may say: a religious who breaks his vow; a witness who gives false testimony; an arrant co-ward; a person not of age to answer; and a wife; for such as those cannot be guardians; and a blind person also, as he cannot see what he has to keep."

### II. THUS THEFT IS TO BE PROSECUTED.

7. "A married woman cannot be an accuser: but a married woman can prosecute for the taking her property, like another person."

### V. THUS VIOLENCE IN ABSENCE IS TO BE TREATED.

5. "Strictly there is no violence but violation of a woman; for the dirwy as a reparation for violence is a silver rod; and a silver rod is payable for no violence but the violation of a woman."

### XVII. THUS A CROSS IS TO BE TREATED.

4. "The cross of a woman is no cross, if she have a husband: neither is her plaint of effect, but for her saraad."

## BOOK THE TENTH.

### (ADDITIONAL LAW.)

### VII. (TRIADS.)

13. "Three persons who are to pay galanas, and who are not to have a share of galanas: a woman; a clerk; and a man who shall pay a spear penny."

31. "In three modes amobyr is paid for a woman: for public cohabitation without either gift or investiture; for pregnancy; and for gift and investiture without either cohabitation, or pregnancy: and for abeudtion, likewise,

8. "A son born to an unmarried woman, is not to be affiliated until the end of fourteen years, unless brought by his mother when born to the door of the church, and before the eldest widow so affiliated, let her affiliate him, along with six women nearest to her, at the end of fourteen years, and so to inherit and she shall have half her expenses until then from the man."

BOOK THE EIGHTH.

(PLEADINGS.)

9. "When the plaintiff himself is to say, that a thief is put on-trial for an advocate, whilst there is a charge of theft against him, for which he is liable to lose a limb, or his life; for, unwalling is what manner, excepting himself, may any in his behalf, before he become bound in law. And thereupon the judge must inquire, that he is not to have an advocate, for a suit whereby he may lose a limb, or his life; but, there are three persons, who are entitled to an advocate: a woman; a foreigner ignorant of the language; and one of imperfect utterance."

10. "And, in the first place, let him give his own oath, to sealing its rending, and knowing its birth, as his own property, and that nothing over separated it from him; and, unless he makes his oath, nothing avails him. Afterwards, let the first be named to first sworn; and let him swear to knowing of its birth, and sealing its rending, in the possession of the man, sealing him, and that it was never separated from him. And those ravishers are to be of the same privilege with himself. In like manner, let the second swear. And, if they do not so swear, he shall be condemned. And see are sufficient, if they be respectable: and his question cannot be objected to, if they be respectable, and of the same rank with himself. There is no discrepancy, but by being an alien: and by being the same persons whose word is not true, whatever they may say: a relations who is not to vest a witness who gives false testimony on great occasions for the taking her property, like another person."

11. THOSE UNFIT IS TO BE PROCURED.

7. "A married woman cannot be an accuser, but a married woman can prosecute for the taking her property, like another person."

V. THOSE VIOLENCE IN ANGER IS TO BE TREATED.

6. "Certainly there is no violence but violation of a woman; for the dirty as a reparation for violence is a silver rod; and a silver rod is payable for no violence but the violation of a woman."

IV. THOSE A DEEDS IS TO BE TREATED.

5. "The cross of a woman is no stain; if she have a husband: neither is her plaint of effect, but for her servant."

BOOK THE TENTH.

(ADDITIONAL LAW.)

VII. (THINGS.)

12. "Three persons who are to pay guidance, and who are not to have a share of guidance: a woman; a client; and a man who shall pay a great penalty."

13. "In three modes money is paid for a woman: for public compensation without either compensation, or precedence; and for abduction, likewise,

amobyr is due; although it does not originate from the three causes, yet it comprizes two, gift, and cohabitation; for, when she went with her abductor, she gave herself up to the man, and became her own disposer; whence abduction comprizes gift, and public cohabitation; for the law says, although a man may not sleep with a woman he may have abducted, unless the man of the house take surety from him for her amobyr, he must pay it himself."

32. "Three persons who are to pay amobyr: the person who shall give her; herself; and one of the three above mentioned."

48. "Three things which do not need surety for their dilysrwydd: portion with a wife; payment to the mediciner from the sick; and gift to a man from his lord."

XVII. (OF A SUIT FOR LAND AND SOIL.)

23. "There are three persons who can be objected to for the same causes: to wit, galanas; and woman-feud: a witness; an evidence; and a lawful informer."

BOOK THE ELEVENTH. (ADDITIONAL LAW.)

III. IN THE SEQUEL IS TO BE EXPLAINED THE LAW

CONCERNING THOSE RELIGIOUS MEN WHO DEVOTE

THEMSELVES TO THE DISCIPLINE OF THEIR LORD ABBOT.

3. "If there be plaints and claims against such men for any dues, none of them can be compelled to answer, before judges, on account of any personal engagement; such as a suretyship, on a contract, or as evidences, or other adjustment of personal due. For, there are certain persons who are exonerated from such obligations: such persons as are bound and consecrated, in the nature of piety and privilege; and a person who is entitled, according to law, to the privilege of sovereignity; and those the law shall separate from the privilege of person that is connected with them, so that the bond of self-participation shall suffer them in no way to be compelled to abide a suit of personal obligation, or promise, as it has been said above, in the case where, according to law, a sovereign cannot be made a party to the matter. Those are, professed men, or canonists, under the obligation of religion; for the privilege of the abbot's supremacy abrogates their privilege, so that they cannot be a party to the suit. Another personal obligation, or vow, is that of a woman, over whom there shall be a dominating rod, by the privilege of marriage; for the privilege of the husband's supremacy abrogates her privilege, so that she shall not be able to make any kind of personal obligation, or promise. And, on that account, they, or persons in similar condition, cannot be compelled to be a party of any obligation of that kind."

5. "Three persons against whom singly no plaints can be prosecuted: a monk without his abbot; a wife without her husband; and a son under age without his father, or guardian, whilst answerable for him."

8. "Three persons who hold land in the king's court, and who receive it from the king, if the land descend to them according to right of inheritance, and who are not required to perform any of the three kinds of service to the lord that are attached to land, except paying his rent and his agwestva: a widow; a youth under age; and a scolar graduated in consecrated orders: because it is requisite for a man to have a wife; and the youth requires the authority of discretion and supervision; and the scholar has no worth set on his tongue, in law, and no one is qualified to judge, except under the penalty of the worth of his tongue."

## XVII. (OF A SUIT FOR LAND AND SOIL.)

39. "There are three persons who can be objected to for the cause
causes to wit, relevant and woman-fault a witness on evidence and a
lawful informer."

BOOK THE ELEVENTH. (ADDITIONAL LAW.)

III. IN THIS SECTION IS TO BE EXPLAINED THE LAW

CONCERNING THOSE RELIGIOUS MEN WHO INVITE

THEMSELVES TO THE DISCIPLINE OF HOLY LIGHT AMONG

5. "If there be plaints and claims against such men for any time,
case of them can be compelled to answer, before judges, on account of any
personal engagement such as a surety-ship, on a contract, or as evidence,
or other attachment of personal due. For, there are certain persons who
are excorciated from such obligations: such persons as are penal and copy-
sected, in the nature of piety and privilege and a person who is entitled,
according to law, to the privilege of sovereignty and those the law shall
separate from the privilege of person that is connected with them, so that
the bond of self-participation shall suffer them in no way to be compelled
to abide a suit of personal obligation, or promise, or it has been said
above, in the case where, according to law, a sovereign cannot be made a
party to the matter. Those are, protected men, or consulate, under the
obligation of religion for the privilege of the district's subject-persons
their privilege, so that they cannot be a party to the suit. Another personal
obligation, or vow, is that of a woman, over whom there shall be a dominating
rod, by the privilege of marriage; for that privilege of the husband's ro-
gatory aforetime for privilege, so that she shall not be able to make any
kind of personal obligation, or promise. And, on that account, they, or
persons in similar condition, cannot be compelled to be a party of any
obligation of that kind."

6. "Three persons against whom simply no plaints can be pronounced:
a monk, without his abbot's write, without her husband and a non under age
without his father, or guardian, whilst answerable for him."

7. "Three persons who hold land in the King's court, all who receive
it from the King, if the land descend to them according to right of succe-
sion, and who are not required to perform any of the three kinds of service
to the land that are attached to land, except paying its rent and his expenses
a vassal's youth under age and a woman circumvented in consecrated estates
because it is requisite for each to have a will: and the youth requires
the authority of discretion and supervision; and the scholar has no will
at or his tuition in law, and no one is qualified to judge, except under
the penalties of the work of his tongue."

33. "The testimony of a husband is not to be credited, by law, against a wife, nor that of a wife against a husband; for, as every wife shares in thirds with her husband, she is not to be credited against him: for the third is not to be credited against the two parts."

54. "As a son is heir to patrimony, so a father is heir to property of the son, unless he have an heir; and, in like manner, a mother to her daughter's property."

## BOOK THE THIRTEENTH.

## II. THESE ARE OTHER TRIADS OF DYVNWAL MCEL MUD, CALLED THE TRIADS OF THE SOCIAL STATE AND FEDERATE STATE; AND WHICH ARE THE ANCIENT TRIADS OF THE PRIVILEGES AND CUSTOMS OF THE KINDRED OF THE CYMRY, BEFORE THEY LOST THEIR PRIVILEGE AND THEIR CROWN, THROUGH THE RAPACITY, FRAUD, AND TREACHERY OF THE SAXONS.

57. "Three common persons against whom there is not to be a naked weapon: an unarmed man; a man before growth of beard; and a female."

81. "Three individuals whom it is the duty of every landed Cymro to keep and support: a married wife; an armed man, where he shall not bear arms himself; and a domestic teacher."

105. "Three persons who are to pay galanas, and who are not to have a share of galanas: a woman; a scholar; and a person who does not pay a spear penny."

110. "Three persons against whom plaints cannot be prosecuted singly and distinctively: a wife without her husband; a son under age without his father; and an aillt without his proprietary lord."

116. "Three women whose sons are entitled to maternity according to law: the son of a woman who shall be given to an alltud by the consent of her kindred; the son of a woman who shall be given as a pledge in a country of a different language, if she shall become pregnant there, since she was pledged by her kindred and her lord; and a woman upon whom an alltud shall commit a rape: for the sons of those women are entitled to the inheritance of their mothers; and the maternal inheritance is not to be delayed until the ninth to any of those three sons."

123. "Three proofs of a person by an individual oath: a woman of being violated by a man; a thrust and sudden attack upon a person unprepared; a father in denying, or in receiving, a son or a reputed son."

125. "Three daughters who do not pay amobyrs: the daughter of a king, or lord of a territory; the daughter of an edling; and the daughter of a chief of kindred."

137. "Three persons who do not forfeit life: a wife in a joint theft with her husband; a boy under age; and the necessitous for the theft of food, after he has traversed three trévs, and nine houses in each trev, without obtaining a gift although asked for."

33. "The testimony of a husband is not to be credited, by law, against a wife, nor that of a wife against a husband, for, as every wife shares in every wife by her husband, she is not to be credited against him. For the third is not to be credited against the two parts."

34. "As a son is bound to maintain, so a father is bound to provide only of the son, unless he have no built and, moreover, a mother to her daughter's property."

BOOK THE THIRTEENTH.

II. THERE ARE OTHER TRIALS OF SPIRITUAL MOVEMENT,

CALLED THE TRIALS OF THE SOCIAL STATE AND FRIENDLY

STATE; AND WHICH ARE THE ANCIENT TRIALS OF THE

PRIVILEGED AND DUTIES OF THE KINGDOM OF

THE CHURCH, BEFORE THEY LOST THEIR INITIATION

AND THEIR GRACE, THROUGH THE RAPACITY, PRIDE,

AND TYRANNY OF THE CLERGY.

CHAPTER I.

OF THE TRIBUNARY OF THE DARKNESS.

37. "Three common persons against whom liberality is not to be used compose an assembly and a vow before growth of beard and a female."

81. "Three [illegible] when it is the duty of every landed Cyrus to keep and support a married sister in armed war, where he shall not fear arms himself; and a domestic teacher."

108. "Three persons who are to pay salaries, and who are not to have a share of pleasure: a servant and a scholar and a person who does not pay his father and an ally without his proprietary lord."

110. "Three persons against whom pleaint cannot be prosecuted singly and distinctively: a wife without her husband and an owner who is not [illegible]."

116. "Three women whose sons are entitled to maternity according to law: the son of a woman who shall be given to an alien by the consent of her kindred; the son of a woman who shall be given as a pledge in a country of a illiterate language, if she shall become pregnant there; state who was pledged by her kindred and her lord and a woman upon whom an action shall commit a rape. For the sons of these women are entitled to the inheritance of their mothers and the maternal inheritance is not to be delayed until the ninth to any of those three sons."

120. "Three proofs of a person by an indictment oath: a woman of forced violated by a rape and a thrust and sudden attack upon a person unprepared; a father in dowries, or in receipts, a son or a rejected son."

124. "Three daughters who do not pay amongst: the daughter of a king, or land of a territory; the daughter of an citizen; and the daughter of a chief of kindred."

127. "Three persons who do not forfeit after a wife in a joint theft with her husband a fat water ox; and the accusations for the theft of food, after he has removed three trees, and nine houses in each tree, without obtaining a gift although asked for."

209. "Three persons for whom the king, or the lord of the court, is to assign advocates in the court: a woman, or female; one that is naturally mute; and an alltud ignorant of the language; and to the alltud likewise there ought to be protection and sustenance by spear allowance; that is, a grant from the country and the lord, lest he die by famine and cold, until he shall be placed in his station in respect to country and kindred."

244. "Three that are not car-removable by compulsion and necessity, upon whom it is not right to impose office; a woman; a bard; and one having no land: for it is not right to impose upon them office of country, or hand upon sword, and they are not to attend to the horn of the country: the bard is devoted by privilege to God and his peace, his office being the cultivation of song; and two offices ought not to be served; and over a woman there is a husband, with the privilege of proprietary lord over her; and it is not right to take from another his appropriation either of person or of property; and one without land ought not to be compelled to have hand upon sword, because he has no land to lose; and it is not right that he should lose life or limb on account of another, but that he should be left to his pleasure and purpose; and where he shall lay hand upon sword, he is called a volunteer; and he becomes entitled to the privilege of a volunteer."

247. "There are three car-departures without return: a married woman, as her privilege has gone from her kindred, and become merged in that of the kindred of her proprietary husband, and that consonant to the privilege and dictate of law, and she is not to return to the privilege of her own kindred: as the law will not undo what once it has knowingly done: one possessed of patrimony, after having been long in a state of alienism in a strange country, and afterwards returning to his own country, and obtaining his land; if he go a second time unquestionably into a state of alienism, he returns not again by right; and, if he do, his patrimony is not to be given to him; the lord of the territory has possession of it in conservancy, until it shall be known what other individual of the kindred has a right to it, and then it is to be given to that one: and a reputed son, that shall be received, or that shall be rejected, by the kindred, which ever shall be done, it ought not to be undone; a reputed son is the son of anyone, or a son of bush and brake, that shall be lawfully received for obtaining a son to be an heir."

## BOOK THE FOURTEENTH

## (ELUCIDATION.)

### III. (TRIADS.)

20. "The three exclusives of a woman, when she shall separate from her husband, the three primaries: her cowyll, her wyneb-werth, on account of her husband's being connected with another woman, to her dishonour; and her saraad, if her husband beat her, and she innocent: and this is a wrong punishment, by law."

25. "Three times a woman has her wyneb-werth, to wit, when she shall get the three primaries: the wyneb-werth of every one is his saraad, without augmentation: her wyneb-werth, the first time she shall find a woman with her husband, is six score pence from her husband; the second time, a pound; the third (time,) she can separate from him, if she will."

26. "The three holds of a wife: when first slept with, she is not to go from thence until the end of the ninth night to become accustomed to her husband; and when she shall separate from her husband, she is not to move from the house until the end of the ninth day, and then after all her property; and when her husband shall die, she is not to go from the house until the end of the ninth day, and then go, unless she avouches of being pregnant; she is there to have time, through her arddelw, by giving surety for (thrice) nine score pence if her arddelw fail her, which is, assurance of pregnancy."

[illegible]

[illegible]

[illegible]

V. (OF LOSING PROPERTY.)

4. "Three gifts which cannot be recalled by law, as being so inseparably given: one is, land given on a lawful day by the lord to a person, which no one that succeeds him can take from him by law; secondly, a woman given by kindred to a man by gift and investiture, who cannot be taken from the man against his will; (thirdly, a gift) given to a person in the presence of witnesses, and removed by the person, which cannot be recalled unless the witnesses fail."

X. (OF DUES TO THE KING.)

7. "Three lawful progresses are due from the country: one is, legal females progress; the second is, the great progress after Christmas; the third, the progress of an officer of the palace."

8. "Two persons are to have a regal female progress: the queen; and the privileged lady, that is, the king's daughter, when he shall be on a border country expedition."

21. "Whoever shall die upon the king's land; if a man, twenty-four pence is to be paid for his death clod; if a woman, sixteen pence."

30. "There are three public concubinages: one is, a man cohabiting with a woman in one house in common, without marriage, without gift and investiture of kindred; second, taking a woman by gift and investiture of kindred, and then separating from her; for the previous cohabitation, (when they were together,) the amobyr is to be paid, for the dissolved marriage by consent to pull; the third is, a woman living in a notorious scandalous manner."

XV. (OF LAW.)

16. "Three men who are not to be dispossessed until a decision be made: a complainant for moveable property by the strength of his plaint is to be put in possession; a defendant (of property) is to be left in possession, if he come upon summons, until a decision shall take place: a married woman who shall assert her pregnancy by her husband, when he may die, is to have time to remain in the house until her delivery; she is, however, to give surety for a camlwrw to the king if her warrant fails her, her warrant being that she is pregnant of a son: and that is a person giving surety for a camlwrw before committing illegality if it do occur: and that is a law that can be enforced where threats are used against a person, who can demand surety for the peace, and against illegality, which, if done, the gorvodog is liable to the camlwrw."

XIX. HERE OF THEFT, AND VIOLENCE, AND SURREPTION.

4. "If the theft be present, he is thus to swear to it: to swear to God, in the first place in every oath, and the relic, that there was no owner to the property but him, and his wife, if he have one, and his lord. He mentions his wife in swearing, because she owns half the property, if she be an endowed wife. Why cannot she give, or lend, or sell the property, without leave, with the exception of what the law allows her to give, when she participates in every swearing? The husband is the chief while they are together, and it is most right to follow the chief."

XXI, (OF ARDDELW.)

2. "Three cases where there is no need for anyone to name his arddelw: when a pregnant woman, after the death of her husband, is sought to be driven from the house, she has time according to her condition; for her arddelw is, that she is pregnant of a son, which cannot be named until it be baptized; second, where a person shall have time for

X. (OF THE KING.)

3. "Three lawful prohibitions are due from the country can it, legal females prohibitions the second is, the great prohibitions after Christmas the third, the prohibitions of an officer of the palace."

9. "Two persons are to have a legal female prohibitions the queen and the privileged lady, that is, the King's daughter, when he shall be on a foreign country expedition."

31. "Whoever shall die upon the king's land if a man, twenty-four pence is to be paid for his death right if a woman, sixteen pence."

30. "There are three public concubinages one is, a man cohabiting with a woman in one house in common, without marriage, without gift and investiture of kindred account, taking a woman by gift and investiture of kindred, and then separating from her for the previous cohabitation, (when they were together,) the second is to be paid, for the disowned marriage by consent to pull the third is, a woman living in a notorious concubine manner."

XV. (OF LAW.)

16. "Three men who are not to be dispossessed until a decision is made a complainant for movable property by the strength of his plaint is to be put in possession a defendant (or property) is to be left in possession, if he come upon summons, until a decision shall take place a married woman who shall assert her freedom by her husband, when he say die, is to have time to remain in the house until her delivery she is, however, to give surety for a country to the king if her warrant take her, her warrant being that she is pregnant of a man, and that is a person dying surety for a country before committing illegality if it do occur and that is a law that can be enforced where threats are used against a person, who can demand surety for the peace, and against illegality, which, if done, the surety is liable to to answer."

XIX. HEAD OF THEFT, AND VIOLENCE, AND SURETYSHIP.

4. "If the theft be present, be in thus to swear to it: to swear to God, in the first place in every oath, and the relic, that there was no owner to the property but him, and his wife, if he have one, and his lord. He mentions his wife in swearing, because she own half the property, without leave, with the exception of what the law allows her to give, when she participates in every swearing. The husband is the chief while they are together, and it is most right to follow the chief."

XXI. (OF ARSON.)

5. "Three cases where there is no need for anyone to name his accuser until it be publicly named, where a person shall have time for justice for her audacity is, that she is pregnant of a son, which cannot be sought to be driven from the house, she has five according to her confinement when a pregnant woman, after the death of her husband, is

aid to fulfil the law, there is no need to name it; he is, nevertheless, to say how far it may be; every person who shall speak for another in a case is an arddelw, and that it is necessary for an advocate to do, and is his occupation, and loss or gain is entrusted to him."

17. "Evidence are objected to in the three ways that a person's words are rejected, or as being without privilege: a guardian before swearing; an evidence, and a witness, after swearing, are to be objected to; the person of an evidence shall be objected to, for his deed; so likewise a witness; a guardian shall have his privilege and words discredited; the blind, the dumb, and the deaf, shall be excepted, by law, on account of their infirmities; and a wife against a husband; and an idiot, as not endowed with reason; a youth, from defect as to age: therefore it is said, that law comprizes no defect."

## XXII. (OF BONDS.)

6. "The three futile bonds are the three futile suretyships; and they are futile on account of its being obligatory to restore them: why are they restored? On account of its being an unlawful (act) for anyone to retain uncertified property in his possession; or that the bond is insecure (since) there has not been a bond on both sides given for the property; or for accepting (such kind of) surety as cannot be a surety; to wit, a wife, or the like. Why is it said that a contract will annul law? It is thus: a contract whereby harm and loss can be shown as done to anyone, if done by the party, such as the killing of a person, or other atrocious act, such a contract will not annul law, but the law will cause that contract to be annulled. A contract, however, from which no harm can be shown, if entered into, (as) if there were given by a man a wife to another man, by law the giver is to pay her amobyr; if the man, however, who shall be the giver, covenants for her herself, or for another to pay her amobyr, there is a contract prevails over justice."

## XXIV. HERE TO FOLLOW OF A LAWFUL LOOSE OATH.

2. "The second is, the oath of a fellow thief; the oath that he makes is, by the death which he is to undergo, of his testimony being true. What if it be a woman? That her testimony is right, whatever woman she may be, whether a widow, or married. Wherefore does the law say, that her word is of no effect against a man? Well does it say, that her word is of no effect, whilst she be living; except between her two sons, being twins, claiming the privileged tyddyn, to ascertain which is the eldest, which the youngest of them: her word here is effective, as she has the same privilege as a thief."

## XXV. (OF THEFT.)

5. "Many various persons, however, escape hanging although found with theft in hand: One is, a youth under fourteen years of age: the second is, a tonsured clerk, by the privilege of ordination, and, if he so avouch, let the lord take all his goods, for he is a fugitive from law, he shelters himself under the church's protection: he is not to benefit by law since he does not conform to law: third, a pauper who shall traverse three trevs, with nine inhabited houses in each trev, without receiving alms, or entertainment, although found with stolen provision for food, less than a burden, is free: fourth, a wife jointly with her husband found with theft in hand, for the husband is the head, and if he be hanged, she is not to be hanged: if the wife, however, be taken for the theft, (let her say,) that the goods belong to her married husband, and let her call him as an arwaesav or arddelw, for she cannot legally keep the goods either by birth and rearing, or custody before loss, and the husband alive, according to the king of goods and according to the nature of the property; and, unless it be one of the three peculiars of a woman, the husband's house is a halog-dy, for the theft committed by the wife."

aid to fulfil the law, there is no need to name it be it, nevertheless, to any how far it may let every person who shall speak for another in a case in an orderly, and that it is necessary for an advocate to do, and is his occupation, and loss or pain is ostimated to him."

IX. "Evidence are objected to in the three ways that a person's words are rejected, or as being without privilege: a guardian before swearing an evidence, and a witness, after swearing, are to be objected to: the person of an evidence shall be objected to, for his deed: so likewise a witness a guardian shall have his privilege and words discredited; the filial, the dumb, and the deaf, shall be excepted, by law, on account of their infirmities: and a wife against a husband and on later, as not that law comprises no defect."

XXII. (CF SCENE.)

6. "The three futile bonds are the three futile worthyships: and they are futile on account of its being obligatory to restore that why are they restored? On account of its being an unlawful (act) for anyone to retain unjustified property in his possession, or that the bond is insecure (place) there has not been a bond on both sides given for the property; or for accepting (such kind of) surety be cannot be a surety to wit, a wife, or the like. Why is it said that a contract will annul land? It is that a contract wholly bans and lore can be done so anyone, it done by the party, such as the killing of a person, or other atrocious act, such a contract will not annul law, but the law will cause that contract to be annulled. A contract, however, free which no bans can be done. If entered into, (as) if there were given by a man a wife to another man, by law the giver is to pay her ancyrt if the time. What if it to a woman? That her testimony is right. Whatever woman she may be, whether a widow, or married. Therefore does the law say, that her word is of no effect against a man? Will does it say, that her word is of no effect, whilst she be living? except between her two sons, being twins, claiming the privileged rights, to ascertain which is the eldest, which the youngest of them: her word here is effective, as she has the same privilege as a thief."

XXV. (CF SCENE.)

5. "Many various persons, however, escape hanging although found with their in hand: One is, a youth under fourteen years of age: the second is, a tormented cleric, by the privilege of ordination, and, if he so avouch, let the lord take all his wealth, for he is a fugitive from law, by place be does not conform to law: third, a pauper who shall traverse three trees, with nine imbolted bonnes in each tree, without receiving alms, or entertainment, although found with stolen provision for food, less than a burden, is first fourth, a wife joinedly with her husband found with theft in hand, for the husband is the bond, and if he be hanged, she is not to be hanged. If the wife, however, be taken for the theft, (let her say,) that the goods belong to her married husband, and let her call him by oath and ransom or ordeal, for she cannot lawfully keep the goods either by theft and robbing, or custody before them, and the husband alive, according to the king or goods and according to the nature of the property and, unless it be one of the three peculiars of a woman, the husband's house is a holog-dy, for the theft committed by the wife."

XXVI. (HERE ARE THE STAYS TO SWEARING.)

6. "Why is it lawful for a married woman, who is under bondage to another, to appear and sue on her own behalf, for her saraad, and it not being necessary nor right for her to sue in any other case but this only?. . . . . And, on that account, the person who has the property in his custody can swear, that nobody could either sell it, or give it, or exchange it, whilst in his possession, and until its time should come, if it had been given into keeping until a time, for he is to answer for it when it shall be claimed by the owner. Further, violence is, property taken in the presence of one, and not denied; and that has not been separated from him in his presence; and, therefore, he cannot swear to it, or complain concerning it."

XXVII. THUS FAR HAS BEEN SPOKEN CONCERNING THEFT PRESENT; HERE IS NOW CONCERNING THEFT NOT PRESENT, THAT IS, REPUTED THEFT AGAINST A PERSON, WITHOUT FINDING IT IN HIS HAND.

19. "A raith does not extend beyond that, unless (there be) a lawful view of theft; (and a) married woman is not to make an oath; but she can prosecute the taking the property she may have, like another (person.)"

XXXIV. (OF AUGMENTATION.)

4. "If the person killed have a married wife, she has a third of the six kine, and the kindred the rest, in the same manner as the galanas."

13. "Lawful objections are: galanas for which reconciliation has not been made with a kindred; land-feud without disposition concerning it; and naming the galanas and the land-feud, and where they occur; and if the lord testify that disposition has taken place of both, it is no objection; and wife-feud, likewise, and that must be also named; and wife-feud is no objection, unless the wife be taken by violence from him, and cohabitation take place with her at the time the testimony in law shall be given."

XXXIX. (OF THEFT.)

10. "A married woman cannot accuse of theft; she can, however, prosecute for theft, and a raith takes place according to the nature of the theft, if she be a widow."

XLI. THUS IT IS AS TO A CROSS.

7. "It is no cross that a married woman shall receive; and she cannot place one against any body."

8. "Everything that a married woman shall do, let her husband answer for her."

XLIV. THUS IT IS AS TO THEFT.

13. "And so all property is sworn to, to wit, by placing his lord as participating in the oath, and his wife, if he have one. The lord is named, because no one is without a lord, and he is entitled to the property of his man, or a share, in many ways. The wife is inserted in the oath because a wife may give and sell the property in many ways, according to the kind of privilege she may have, and the nature of the

# A N C I E N T

# L A W S  A N D  I N S T I T U T E S

# O F

# E N G L A N D

V O L.  I.

# THE ANGLO-SAXON LAWS

THE LAWS OF KING AETHELBIRHT

THE LAWS OF HLOTHHAERE AND EADRIC

THE LAWS OF KING WIHTRAED

THE LAWS OF KING ALFRED

THE LAWS OF KING INE

THE LAWS OF EDWARD AND GUTHRUM

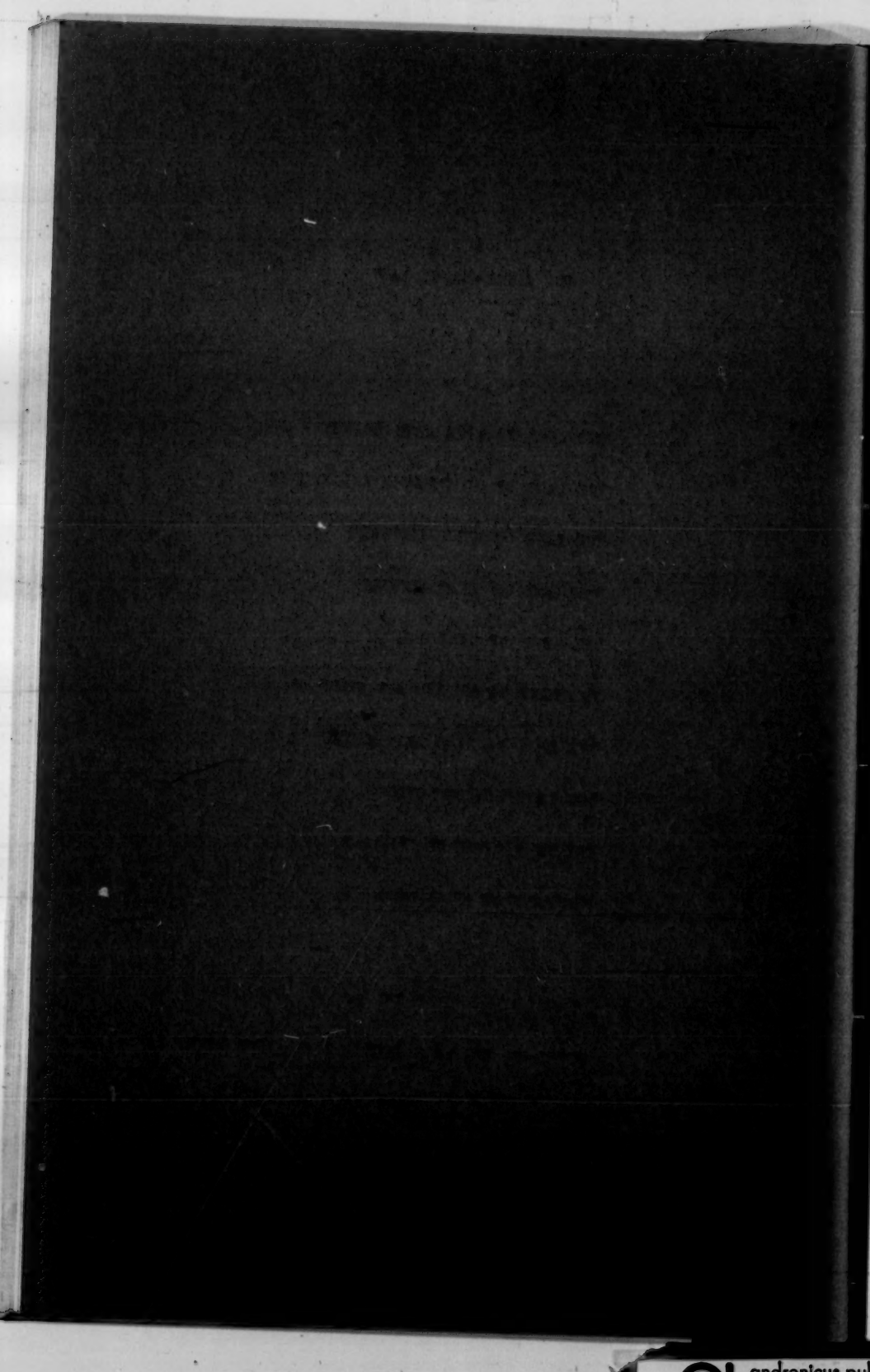
THE LAWS OF KING AETHELSTAN

THE LAWS OF KING EDMUND

THE LAWS OF KING ETHELRED

THE LAWS OF KING CNUT

NOTES ON THE LAWS ASCRIBED TO KING HENRY I.



property, yet the husband is paramount in the ownership of the property, although she may give it without the consent of the husband, and the husband is to sue for the property."

THE LAWS OF KING AETHELBIRHT.

10. "If a man lie with the king's maiden, ket him pay a 'bot' of L. shillings."

11. "If she be a grinding slave, let him pay a 'bot' of XXV. shillings. The third (class) XII. shillings."

12. "Let the king's 'fed-esl' be paid for with XX. shillings."

14. "If a man lie with an 'eorl's' birele,' let make 'bot' with XII. shillings."

16. "If a man lie with a 'ceorl's 'birele,' let him make 'bot' with VI. shillings; with a slave of the second (class), L. 'scaetts;' with one of the third, XXX. 'scaetts.'"

31. "If a freeman lie with a freeman's wife, let him pay for it with his 'wer-geld,' and provide another wife with his own money and bring her to the other."

73. "If a freewoman 'loc-bore' commit any 'leswe,' let her make a 'bot' of XXX. shillings."

74. "Let 'maiden-bot' be as that of a freeman."

75. "For the 'mund' of a widow of the best class, of an 'eorl's degree, let the 'bot' be L. shillings; of the second, XX. shillings; of the third, XII. shillings; of the fourth, VI. shillings."

76. "If a man carry off a widow not in his own tutelage, let the 'mund' be twofold."

77. "If a man buy a maiden with cattle, let the bargain stand,' if it be without guile; but if there be guile, let him bring her home again, and let his property be restored to him."

78. "If she bear a live child, let her have half the property, if the husband die first."

79. "If she wish to go away with her children, let her have half the property."

80. "If the husband wish to have them, (let her portion be) as one child."

81. "If she bear no child, let her paternal kindred have the 'fioh' and the 'morgen-gyfe."

82. "If a man carry off a maiden by force, let him pay L. shillings to the owner, and afterwards buy (the object of) his will of the owner."

83. "If she be betrothed to another man in money, let him make 'bot' with XX. shillings."

THE LAWS OF KING AETHELBIRHT.

84. "If she become 'gaengang,' XXXV. shillings; and XV. shillings to the king."

property, yet the husband is paramount in the ownership of the property, although he may give it without the consent of the husband, and the husband is to sue for the property."

## 4. THE LAWS OF KING ARTHUR'S RIGHT.

10. "If a man lie with the king's maiden, let him pay a 'lot' of I. shillings."

11. "If she be a grieding slave, let him pay a 'lot' of XXX. shillings. The third (piece) XII. shillings."

12. "But the king's 'led-earl' is paid for with XX. shillings."

13. "If a man lie with an 'earl's' fireld, let make 'lot' with XII. shillings."

14. "If a man lie with a 'ceorl's' 'fireld,' let him make 'lot' with VI. shillings with a slave of the second (class), I. 'sceatt' with one of the third, XXX. 'sceatts.'"

15. "If a freeman lie with a freeman's wife, let him pay for it with his 'were-geld,' and provide another wife with his own money and bring her to the other."

16. "If a freewoman 'lon-bore' commit any 'lones,' let her make a 'lot' of XXX. shillings."

17. "Let 'maiden-lot' be as that of a freeman."

18. "For the 'maid' of a widow of the best class, of an 'earl's degree, let the 'lot' be I. shillings; of the second, XX. shillings; of the third, XII. shillings; of the fourth, VI. shillings."

19. "If a man carry off a widow not in his own tuelage, let the 'maid' be twelfold."

20. "If a man buy a maiden with cattle, let the bargain stand, if it be without guile; but if there be guile, let him bring her home again, and let his property be restored to him."

21. "If she bear a live child, let her have half the property, if the husband die first."

22. "If she wish to go away with her children, let her have half the property."

23. "If the husband wish to have them, (let her portion be) as one child."

24. "If she bear no child, let her paternal kindred have the 'fioh' and the 'morgen-gyfe.'"

25. "If a man carry off a maiden by force, let him pay L. shillings to the owner, and afterwards buy (the object of) his will of the owner."

26. "If she be betrothed to another man in money, let him make 'lot' with XX. shillings."

## 5. THE LAWS CONCERNING ARMENLIGHT.

27. "If she become 'gecnoweow,' XXXV. shillings and XV. shillings to the king."

85. "If a man lie with an 'esne's wife, her husband still living, let him make twofold 'bot.'

THE LAWS OF KINGS HLOTHHAERE AND EADRIC.

6. "If a husband die, wife and child yet living, it is right that the child follow the mother; and let there be sufficient 'borh' given to him from among his paternal kinsmen, to keep his property till he be X. years of age."

THE LAWS OF KING WIHTRAED.

12. "If a husband, without his wife's knowledge, make an offering to devils, let him be liable in all his substance and his 'heals-fang.' If both make offering to devils, let them be liable in their 'heals-fang,' and all their substance."

THE LAWS OF KING ALFRED.

ALFRED'S DOOMS (SCRIPTUAL LAWS)

11. "these are the dooms which thou shalt set for them. If anyone buy a Christian 'theow,' let him serve VI. years; the seventh he shall be free without purchase. With such raiment as he went in, with such go he out. 'If he have a wife of his own, go she out with him. If, however, the lord have given him a wife, be she and her child the lord's, But if the 'theow' should say: I will not from my lord, nor from my wife, nor from my child, nor from my goods;' let his lord then bring him to the door of the Temple, and bore his ear through with an awl, in token that he ever after shall be a 'theow.'"

12. "Though anyone sell his daughter to servitude, let her not be altogether such a 'theowu' as other female slaves are. He ought not to sell her away among a strange folk. But if he who bought her reck not of her; let her go free among a strange folk. If, however, he allow his son to cohabit with her, let him marry her: and let him see that she have raiment, and that which is the worth of her maid-hood, that is, the dowry; let him give her that. If he do unto her none of these things, then let her be free."

14. "He who smiteth his father or his mother, he shall perish by death."

15. "He who stealeth a freeman, and selleth him, and it be proved against him so that he cannot clear himself; let him perish by death. He who curseth his father or his mother, let him perish by death."

17. "He who smiteth his own 'theowOesne' or his female slave, and he die not on the same day; though he live (but) two or three nights, he is not altogether so guilty, because it was his own property; but if he die the same day, then let the guilt rest on him."

18. "If anyone, in strife, hurt a breeding woman, let him make 'bot' for the hurt, as the judges shall prescribe to him. If she die, let him give soul for soul."

19. "If anyone thrust out another's eye, let him give his own for it; tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."

20. "If anyone smite out the eye of his 'theow' or of his 'theowen,' and he then make them one-eyed; let him free them on this account. And if he smite out a tooth, let him do the like."

## THE LAWS OF KING ALFRED.

### ALFRED'S DOOMS (SCRIPTUAL LAWS)

21. "If an ox gore a man or a woman, so that they die, let it be stoned, and let not its flesh be eaten. The lord shall not be liable, if the ox were wont to push with its horns for two or three days before, and the lord knew it not; but if he knew it, and he would not shut it in, and it then shall have slain, or the man be paid for, as the 'witan' decree to be right. If it gore a son or a daughter, let him be subject to the like judgment. But if it gore a 'theow-mennen,' let XXX. shillings of silver be given to the lord, and let the ox be stoned."

29. "If anyone deceive an unbetrothed woman, and sleep with her; let him pay for her, and have her afterwards to wife. But if the father of the woman will not give her, let him render money according to her dowry."

30. "The woman who are wont to receive enchanters, and workers of phantasma, and witches, suffer thou not to live."

34. "Injure ye not the widows and step-children, nor hurt them anywhere: for if ye do otherwise, they will cry unto me, and I will hear them, and I will then slay you with my sword; and I will so do that your wives shall be widows, and your children shall be step-children."

### OTHER LAWS.

### OF FORNICATION WITH A NUN.

8. "If anyone carry off a nun from a minister, without the king's or the bishop's leave, let him pay a hundred and twenty shillings, half to the king, half to the bishop and to the church-'hlaford' who owns the nun. If she live longer than he who carried her off, let her not have aught of his property, more than the mother. If anyone slay her child, let him pay to the king the maternal kindred's share; to the paternal kindred let their share be given."

### OF SLAYING A CHILD-BEARING WOMAN.

9. "If a man kill a woman with her child, while the child is in her, let him pay for the woman her full 'wer-gild,' and pay for the child half a 'wer-gild,' according to the 'wer' of the father's kin."

"Let the 'wite' be always LX. shillings, until the 'angylde' rise to XXX. shillings. After the 'angylde' has risen to that let the 'wite' be CXX. shillings. Formerly there was (a distinct 'wite') for a gold-thief, and a mare-thief, and a bee-thief, and many 'wites,' greater than others; now are all alike, except for a man-thief, CXX. shillings."

### OF THE ADULTERY OF A TWELVE-'HYNDE' MAN'S WIFE.

10. "If a man lie with the wife of a twelve-'hynde' man, let him make a 'bot' to the husband with one hundred and twenty shillings. To a six-'hynde' man, let him make 'bot' with one hundred shillings. To a 'ceorlish' man, let him make 'bot' with forty shillings."

### OF SEIZING HOLD OF A 'CEORLISH' WOMAN.

11. "If a man seize hold of the breast of a 'ceorlish' woman, let him make 'bot' to her with V. shillings. If he throw her down and do not

## THE LAWS OF KING ALFRED.

### ALFRED'S DOOMS (SCRIPTURAL LAWS)

21. "If an ox gore a man or a woman, so that they die, let it be stoned, and let not its flesh be eaten. The lord shall not be liable, if the ox were wont to rush with its horns for two or three days before, and the lord knew it well but it to know it, and he would not shut it in, and it slay a man or woman, the ox shall be stoned, and the lord also shall be slain. If it gore a man or a daughter, let him be subject to the right. If it gore a son or a daughter, let him be subject to the judgment. But if it gore a 'thrae-mannan', let XXX. shillings of silver be given to the lord, and let the ox be stoned."

22. "If anyone destroy an unfastened vessel, and along with part let him pay for her, and have her afterwards to wife. But if the father of the woman will not give her, let him render money according to her dowry."

23. "The woman who are wont to receive enablers, and workers of penances, and witches, suffer them not to live."

24. "Injure ye not the widows and stat-children, nor hurt them, lest they cry to me, and I will hear them, and I will slay you with my sword, and I will be to them your wives and your children shall be stop-children."

### CIVIL LAWS.

#### OF KIDNAPPING WITH A VIEW TO RANSOM.

25. "If anyone carry off a man from a minster, without the [illegible] or the bishop's leave, let him pay a hundred and twenty shillings, [illegible] to the king, half to the bishop and to the church-[illegible] who owns the [illegible]. If one slay [illegible] carry off, let her pay [illegible] weight of his property, more than the nidding. If anyone slay her child, let him pay to the king the natural Kindred's epeet to the paternal kindred for their share to flight."

#### OF SLAYING A CHILD-BEARING WOMAN.

26. "If a man kill a woman with her child, while the child is in her, let him pay for the woman her full 'wer-gild,' and pay for the child half a 'wer-gild,' according to the 'wer' of the father's kin."

"Let the 'wites' be always IX. shillings, until the 'ancrig' [illegible] to XXX. shillings. After the 'ancrig' has come to that let the 'wites' [illegible] and a half-'wite', and only 'wite' [illegible] for a child-thief, and a nose-thief, and a two-'wite', and only 'wite' [illegible] otherwise now are all alike, except for a man-thief, XXX. shillings."

#### OF THE SLAUGHTER OF A [illegible]-[illegible] MAN'S

#### WIFE.

28. "If a man see the wife of a twelve-hynde man, let him make a 'wer' to the husband with one hundred and twenty shillings. To a six-hynde man, let the same 'wer' with one hundred shillings. To a 'ceorlisc' man, let him make 'wer' with forty shillings."

#### OF SELLING OUT OF A 'CEORLISC' MAN'S

29. "If a man sells hold of the tyrant of a 'ceorlisc' woman, let him make 'wer' to her with V. shillings. If he [illegible] her down and be not

lie with her, let him make 'bot' with X. shillings. If he lie with her, let him make 'bot' with LX. shillings. If another man had before lain with her, then let the 'bot' be half that. If she be charged (therewith), let her clear herself with sixty hides, or forfeit half the 'bot.' If this befall a woman more nobly born, let the 'bot' increase according to the 'wer.'"

IN CASE ANYONE COMMIT A MINOR TO ANOTHER'S KEEPING.

17. "If anyone commit his infant to another's keeping, and he die during such keeping, let him who feeds him prove himself innocent of treachery, if anyone accuse him of aught."

OF SEIZING HOLD OF A NUN.

18. "If anyone, with libidinous intent, seize a nun either by her raiment or by her breast without her leave, let the 'bot' be twofold, as we have before ordained concerning a laywoman. If a betrothed woman commit adultery, if she be of 'ceorlish' degree, let 'bot' be made to the 'byrgea' with LX. shillings, and let it be in live stock, cattle goods, and in that let no human being be given: if she be of six-'hynde' degree, let him pay one hundred shillings to the 'byrgea:' if she be of XII, 'hynde' degree, let him make 'bot' to the 'byrgea' with CXX. shillings."

OF THE RAPE OF A 'CEORL'S FEMALE SLAVE.

25. "If a man commit a rape upon a 'ceorl's' female slave, let him make 'bot' to the 'ceorl' with V. shillings, and let the 'wite' be LX. shillings. If a male 'theow' commit a rape upon a female 'theow', let him make 'bot' with his testicles."

OF THE RAPE OF A WOMAN UNDER AGE.

26. "If a man commit a rape upon a woman under age, let the 'bot' be as that of a full-aged person."

(OF KINLESS MEN.)

27. "If a man, kinless of paternal relatives, fight, and slay a man, and then if he have maternal relatives, let them pay a third of the 'wer;' his guild-brethren a third part; for a third let him flee. If he have no maternal relatives, let his guild-brethren pay half, for half let him flee."

OF FEUDS.

42. "We also command: that the man who knows his foe to be home-sitting fight not before he demand justice of him. If he have such power that he can beset his foe, and besiege him within, let him keep him within for VII. days, and attack him not, if he will remain within. And then, after VII. days, if he will surrender, and deliver up his weapons, let him be kept safe for XXX. days, and let notice of him be given to his kinsmen and his friends. If, however, he flee to a church, then let it be according to the sanctity of the church: as we have before said above. But if he have not sufficient power to besiege him within, let him ride to the 'ealderman,' and beg aid of him. If he will not aid him, let him ride to the king before he fights. In like manner also, if a man come upon his foe, and he did not before know him to be home-staying: if he be willing to deliver up his weapons, let him be kept for XXX. days, and let notice of him be given to his friends; if he will not deliver up his weapons, then he may attack him. If he be willing to surrender, and to

## (OF KINDRED MEN.)

## OF KINDRED.

## OF THE HEAD OF A WOMAN UNDER AGE.

## OF THE HEAD OF A WOMAN'S SLAVE.

## OF THE HEAD OF A 'CHORL'S FEMALE SLAVE.

## OF DEALING WELL OF A MAN.

## IN CASE ANYONE COMMIT A MINOR TO ANOTHER'S

## KEEPING.

deliver up his weapons, and anyone after that attack him, let him pay as well 'wer' as wound, as he may do, and 'wite,' and let him have forfeited his 'maeg'-ship. We also declare, that with his lord a man may fight 'orwige,' if anyone attack the lord: thus may the lord fight for his man. After the same wise, a man may fight with his born kinsman, if a man attack him wrongfully, except against his lord; that we do not allow. And a man may fight 'orwige,' if he find another with his lawful wife, within closed doors, or under one covering, or with his lawfully-born daughter, or with his lawfully-born sister, or with his mother, who was given to his father as his lawful wife."

## THE LAWS OF KING INE.

### OF STEALING.

7. "If anyone steal, so that his wife and his children know it not, let him pay LX. shillings as 'wite.' But if he steal with the knowledge of all his household, let them all go into slavery. A boy of X. years may be privy to a theft."

### OF SLAYING A FOREIGNER.

23. "If a foreigner be slain, the king has two parts of the 'wer,' a third part his son or kinsmen. But if he be kinless, half the king, half the 'gesith.' If, however, it be an abbot or an abbess, let them divide in the same wise with the king.

A 'Wealh gafol-gelda,' CXX. shillings; his son, C.; a 'theow,' LX.; some with fifty: a 'Wealh's hide with twelve."

### IN CASE A MAN BUY A WIFE, AND THEN THE MARRIAGE TAKE NOT PLACE.

31. "If a man buy a wife, and the marriage take not place; let him give the money, and compensate and make 'bot' to his 'byrgea,' as his 'borg-bryce' may be."

### IN CASE LAWFULLY MARRIED PERSONS HAVE A CHILD, AND THEN THE HUSBAND DIE.

38. "If a 'ceorl' and his wife have a child between them, and the 'ceorl' die, let the mother have her child and feed it: let VI. shillings be given her for its fostering; a cow in summer, an ox in winter. Let the kindred take care of the 'frum-stol' until it be of age."

### OF A 'CEORLISH' MAN'S STEALING.

57. "If a 'ceorl' steal a chattel, and bear it into his dwelling, and it be attached therein; then shall he be guilty for his part, without his wife, for she must obey her lord. If she dare to declare by oath that she tasted not of the stolen property, let her take her third part."

## THE LAWS OF EDWARD AND GUTHRUM.

### OF INCESTUOUS PERSONS.

4. "And concerning incestuous persons, the 'witan' have ordained, that the king shall have the upper, and the bishop the nether, unless 'bot' be made before God and before the world, according as the deed may be; so as the bishop may teach. If two brothers or two near kinsmen

## THE LAWS OF KING IAN.

### OF STEALING.

7. "If anyone steal, so that his wife and his children know it not, let his pay 1X, shillings as 'mite.' But if he steal with the knowledge of all his household, let them all go into slavery. A boy of X. years may be privy to a theft."

### OF SLAVING A FOREIGNER.

10. "If a foreigner be slain, the King has two parts of the 'wer,' a third part his own or kinsmen. But if he be slain, half the King's half the 'wer-gild.' If, however, it be an object or an image in the name wise with the King.

A 'Wooh gwif-gelde,' [illegible] his son, or a 'thees,' if: some with fifty: a 'Wooh's side with twelve."

### IN CASE A MAN BUY A WIFE, AND THEN DIE

### MARRIAGE TAKE NOT PLACE.

31. "If a man buy a wife, and the marriage take not place let him give the money, and compensate and make 'bot' to his 'byrgen,' as his 'borg-byrge' may be."

### IN CASE LAWFULLY MARRIED PERSONS HAVE A

### CHILD, AND THEN THE HUSBAND DIE.

36. "If a 'ceorl' and his wife have a child between them, and the 'ceorl' die, let the mother have her child and feed it: let Al. Half-age be given her for the fostering a cow in summer, an ox in winter. Let the kindred once care of the 'frum-stol' until it be of age."

### OF A 'CEORLISH' MAN'S STEALING.

65. "If a 'ceorl' steal a chattel, and buy it into his dwelling, and it be attended thereto then shall he be guilty for his part, without his wife, for she must obey her lord. If she dare to declare by oath that she learned not of the stolen property, let her take her third part."

### THE LAWS OF KINARD AND OUTBORN.

### OF INCESTUOUS PERSONS.

6. "And concerning incestuous persons, the 'wilan' have ordained, that the King should have the upper, and the bishop the nether, unless 'bot' be made before God and before the world, according as the deed may be: so as the bishop may teach. If two brothers or two near kinsmen

commit fornication with the same woman, let them make 'bot' very strictly, in such wise as it may be allowed, as well as 'wer,' as by 'wite' or by 'lah-slit,' according as the deed may be."

"If a man in orders foredo himself with capital crime, let him be seized and held to the bishop's doom."

OF WITCHES, DIVINERS, PERJURERS, ETC.

11. "If witches or diviners, perjurers or 'morth-workers, or foul, defiled, notorious adulteresses, be found anywhere within the land; let them then be driven from the country and the people cleansed, or let them totally perish within the country, unless they desist, and the more deeply make 'bot.'"

THE LAWS OF KING AETHELSTAN.

IV.

"AEthelstan king makes known: that I have learned that our 'frith' is worse kept then is pleasing to me, or it at 'Greatanlea' was ordained; and my 'witan' say that I have too long borne with it. Now I have decreed with the 'witan' who were with me at Exeter at mid-winter; that they (the 'frith-breakers) shall all be ready in themselves and with wives and with property and with all things, to go whither I will, (unless from henceforth they shall desist,) on this condition, that they never come again to the country. And if they shall ever again be found in the country, that they be as guilty as he who may be taken 'hand-habbende.' And he who shall entertain them or anyone of their men, or send any man to them, be he liable in himself and in all things that he has: now that is, because that the oaths, and the 'weds,' and the 'borhs' are all disregarded and broken which there were given; and we know of no other things to trust in except it be this."

THIS IS THEN FIRST:

1. "That no thief be spared over XII. pence, and no person over XII. years, whom we learn according to folk-right that he is guilty, and can make no denial; that we slay him, and take all that he has; and first, take the 'ceap-gild' from the property; and after that let the surplus be divided into II.; one part to the wife, if she be innocent, and were not privy to the crime; and the other into II.; let the king take half, half the fellowship. If it be 'boc-land,' or bishops' land, then has the land-lord the half part in common with the fellowship."

THE LAWS OF KING EDMUND.

ECCLESIASTICAL.

KING EDMUND'S INSTITUTES.

OF THE CHASTITY OF ECCLESIASTICS.

1. "This is the first: that those holy orders who have to teach God's people by their life's example, hold their chastity according to their degree, as well of man's degree as of woman's degree, whichsoever it may be. If they do not so, then are they worthy of that which in

the canon is ordained; that is, that they forfeit their wordly possessions and a consecrated burial-place, unless they make 'bot.'"

OF NUN'S FORNICATION AND OF ADULTERY.

4. "He who commits fornication with a nun, let him not be worthy of a consecrated burial-place (unless he make 'bot'), any more than a man-slayer. We have ordained the same respecting adultery."

SECULAR.

"Edmund king makes known to all people, both old and young, that are in his dominion, that which I have deliberated with the council of my 'witan,' both ecclesiastic and secular. First, how I might most promote Christianity. Then seemed it to us, first, most needful that we should most firmly preserve our peacefulness and harmony among ourselves, throughout all my dominion. To me and to us all are exceedingly offensive the unrighteous and manifold fightings that are among ourselves: we have therefore ordained:

OF BETROTHING A WOMAN.

1. "If a man desire to betroth a maiden or a woman, and it so be agreeable to her and her friends, then is it right that the bridegroom, according to the law of God, and according to the customs of the world, first promise, and give a 'wed' to those who are her 'foresprecas,' that he desire her in such wise that he will keep her, according to God's law, as a husband shall his wife: and let his friends guarantee that."

2. "After that, it is to be known to whom the 'foster-lean' belongs: let the bridegroom again give a 'wed' for this; and let his friends guarantee it."

3. "Then, after that, let the bridegroom declare what he will grant her, in case she choose his will, and what he will grant her, if she live longer than he."

4. "If it be so agreed, then is it right that she be entitled to half the property, and to all, if they have children in common, except she again choose a husband."

5. "Let him confirm all that which he has promised with a 'wed;' and let his friends guarantee that."

6. "If they then are agreed in everything, then let the kinsmen take it in hand, and betroth their kinswoman to wife, and to a righteous life, to him who desired her, and let him take possession of the 'borh' who has control of the 'wed.'"

7. "But if a man desire to lead her out of the land, into another thane's land, then it will be advisable for her that her frineds have an agreement that no wrong shall be done to her; and if she commit a fault, that they may be nearest in the 'bot,' if she have not whereof she can make 'bot.'

OF MUTUAL COMMUNICATION AND OF ADJUSTMENT.

6. "We who commit ourselves with a man, let him not be sorry of a consecrated burial-place (unless he make 'lot'), why more than a one-slayer. We have ordained the same respecting adultery."



CIRCULAR.

"Edmund King makes known to all people, both old and young, that are in his session, that which I have deliberated with the council of my 'wites,' both ecclesiastic and secular. First, how I might most promote Christianity. Then seemed it to us, first, most needful that we should most firmly preserve our peacefulness and harmony among ourselves, throughout all my dominion. To us and to us all are exceedingly offensive the warlikenes and manifold lightings that are among ourselves: we have therefore ordained:



OF MATRIMONIAL & HOMELY.

1. "If a man desire to betroth a maiden or a woman, and it be agreeable to her and her friends, then is it right that the bridegroom, according to the law of God, and according to the customs of the earth, first promise, and give a 'wed' to those who are for 'forespreas,' that he desire her in such wise that he will keep her, according to God's law, as a husband shall his wife: and let his friends guarantee that."

2. "After that, it is to be known to whom the 'foster-lean' belongs: let the bridegroom again give a 'wed' for child and let his friends guarantee it."

3. "Then, after that, let the bridegroom declare what he will grant her, in case she choose his will, and what he will grant her, if she live longer than he."

4. "If he so accord, then is it right that she be entitled to half the property, and to all, if they have children in common, except she again choose a husband."

5. "Let him confirm all that which he hath promised with a 'wed;' and let his friends guarantee that."

6. "If they then are agreed, in everything, then let the witness take it in hand, and betroth their witnesses to wife, and to a righteous life, to him who desired her, and let him take possession of the 'morh' who has control of the 'wed.'"

7. "But if a man desire to lead her out of the land, into another stance's land, then it will be adjunable for her that her friends have an agreement that no stent shall be done to her, and if she commit a fault, that they may be reasonable in the 'bot,' if she have not observed she can make 'lot.'

THE LAWS OF KING ETHELRED.

V.

21. "And let every widow, who conducts herself lawfully, be in God's 'grith' and the king's: and let every one continue XII. months husbandless: afterwards let her choose what she herself will."

VI.

COUNCIL OF ENHAM.

OF THE ORDINANCES OF THE 'WITAN.'

2. "And it is the ordinance of the 'witan,' that abbots and abbesses rightly order their own life, and also wisely keep their flocks; and that men of every order willingly submit, before God and before the world, each to that law that is appropriate to him: and especially, that God's servants, bishops and abbots, monks and mynchens, canons and nuns, turn to right, and live according to rule, and intercede fervently for all Christian people."

5. "And all God's servants, and priests above all, we beseech and enjoin, that they obey God, and love chastity, and secure themselves against God's ire. Full well they know, that they have not rightfully, through any concubinage, intercourse with woman: but it is the worse, that some have two or more; and one, though he had forsaken her whom he had previously, he, she being living, often takes another, as is not allowable for any Christian man to do: and let him who will refrain from this, and preserve his chastity, have God's mercy; and, in addition thereto, for wordly honour, that he be worthy of thane-'were,' and thane-right, both in life and in the grave: and he who will not that which is fitting to his order, let his honour wane both before God and before the world."

7. "And if witches or soothsayers, magicians or whores, 'morth'-workers or perjurors, be anywhere found in the country, let them diligently be driven out of this country, and this people be purified: or let them totally perish in the country, unless they desist, and the more deeply make 'bot.'"

11. "And we direct very earnestly, that every Christian man carefully avoid unlawful concubinage, and rightly observe Christian law."

12. "And let it never be, that a Christian man marry within the relationship of VI. persons, in his own kin, that is within the fourth degree; nor with the relict of him who was so near in wordly relationship; nor with the wife's relation, whom he before had had. Nor with any hallowed nun, nor with his godmother, nor with one divorced, let any Christian man ever marry; nor have more wives than one, but be with that one, as long as she may live; whoever will rightly observe God's law, and secure his soul from the burning of hell."

26. "And let every widow, who conducts herself lawfully, be in God's 'grith,' and the king's, and let every one continue XII. months husbandless; afterwards let her choose what she herself will."

THE LAWS OF KING ETHELRED.

39. "And if anyone defile a nun, or force a widow, let him make 'bot' for that deeply, before God and before the world."

## V.

## THE LAWS OF KING EDWARD.

## VI.

## CONCERNING OF KINDRED.

### OF THE ORDINANCES OF THE 'KINAN.'

47. "And that they do not too often oppress widows and step-children, but willingly gladden them."

IX.

30. "Let him know, if he will, that it befits him not to have any concern either with woman or with temproal war; if he desire uprightly to obey God, and observe God's laws, as is properly becoming to his order."

THE LAWS OF KING CNUT.

6. "And we will, that men of every order readily submit, each to that law which is becoming to him; and above all, let the servants of God, bishops and abbots, monks and mynchens, canons and nuns, submit to law, and live according to rule, and by day and by night, oft and frequently, call to Christ, and fervently intercede for all Christian people. And we beseech and instruct all God's servants, and especially priests, that they obey God and love chastity, and secure themselves against God's ire, and against the fierce burning which rageth in hell. Full well they know, that they have not lawfully through concubinage intercourse with woman; and let him who will abstain from this, and preserve his chastity, have God's mercy, and, for wordly honour, be he worthy of thane-law. And let every Christian man also, for dread of his Lord, strictly eschew unlawful concubinage, and rightly observe the divine law."

7. "And we instruct and beseech and, in God's name, command, that no Christian man ever marry in his own family within the relationship of VI. persons? nor with the relict of his kinsman who was so near of kin; nor with the relative of the wife whom he had previously had; nor with his godmother, nor with a hallowed nun, nor with one divorced, let any Christian man ever marry, nor any fornication anywhere commit; nor have more wives than one, and let that be his wedded wife; but let him be with her alone, as long as she may live, whoever will rightly keep God's law, and secure his soul against the burning of hell."

SECULAR.

4. "And we command, that ye undertake diligently to cleanse the country on every side, and every where to desist from evil deeds: and if witches or diviners, 'morth'-workers or adulteresses, be any where found in the land, let them be diligently driven out of this country; or let them totally perish in the country, except they desist and the more thoroughly amend.

"And we command, that adversaries and outlaws of God and men retire from the country, unless they submit and the more earnestly amend: and let thieves and public robbers forthwith perish, unless they desist.

OF ADULTERY.

51. "If anyone commit adultery, let him make 'bot' for it as the deed may be. It is a wicked adultery when a married man lies with a single woman, and much worse, with another's wife, or with one in holy orders."

47. "And that they do not too often oppress widows and step-children, but willingly clad them."

IX.

48. "That His word, if he will, that it belie him not to have any concern either with woman or with temporal want if he devote diligently to obey God, and observe God's laws, as is properly beseeming to his order."

THE LAND OF KING CNUT.

6. "And we will, that men of every order readily submit, each to that law which is becoming to him and above all, let the servants of God, bishops and abbots, monks and anchorets, canons and nuns, submit to law, and live according to rule, and by day and by night, oft and frequently, call to Christ, and fervently intercede for all Christian people. And we beseech and instruct all God's servants, and especially priests, that they obey God and love chastity, and acquire themselves against God's ire, and against the flerce rushing which regards in hell. Still well they know, that they have not lawfully through concubinage nor through unlawful and let him who still abstain from this, and preserve his chastity, have God's mercy, and, for worthy honour, be worthy of stand-law. And let every Christian man also, for fread of his lord, strictly eschew unlawful concubinage, and rightly observe the divine law."

7. "And we instruct and beseech and, in God's name, command, that no Christian man ever marry in his own family within the relationship of VI. persons nor with the relict of his kinsman who he had previously near of kin nor with the relative of the wife whom he had previously had nor with his godmother, nor with a hallowed nun, nor with one divorced. Let any Christian man ever marry, nor any fornication and where commit nor have more wives than one, and let that be him wedded wife but let him be with her alone, as long as she may live, whoever will rightly keep God's law, and acquire his soul against the burning of hell."

LEGISLATION.

4. "And we command, that ye moderate diligently to clemency the country on every side, and every where to doubt from evil doubt and if witnobe or diatnere, 'doubt'-worthore or adulteress, in any where found in the land, let them be diligently driven out of this country, or let them totally perish in the country, except they desire and the more thoroughly amend."

"And we command, that adversaries and outlaws of God and men resting from the country, unless they submit and the more earnestly mercy and let thieves and public robbers forestalk perish, unless they desist."

OF AMUSEMENT.

21. "If anyone commit adultery, let him make 'fbot' for it as the deed may be. It is a wicked adultery with a married one like with a virgin woman, and much worse, with another's wife, or with one in holy orders."

## OF INCEST.

52. "If anyone commit incest, let him make 'bot' for it according to the degree of kin; as well with 'wer,' as with 'wite,' and with all his possessions. It is by no means alike whether a man lie with a sister, or if it were a distant relative."

## OF WIDOWS AND MAIDS.

53. "If anyone ravish a widow, let him make 'bot' for it with his 'wer.' If anyone ravish a maid, let him make 'bot' for it with his 'wer.'"

## THAT NO WOMAN COMMIT ADULTERY.

54. "If, during her husband's life, a woman lie with another man, and it become public, let her afterwards be for a wordly shame as regards herself, and let her lawful husband have all that she possessed; and let her than forfeit both nose and ears: and if it be a prosecution, and the 'lad' fail, let the bishop use his power, and doom severely."

55. "If a married man lie with his own maidservant, let him forfeit her, and make 'bot' for himself to God and to men: and he who has a lawful wife, and also a concubine, let no priest administer to him any of those rites which ought to be administered to a Christian man; ere he desist, and so deeply make 'bot' as the bishop may teach him; and let him ever desist from the like."

## OF THE HERIOT.

71. "And if anyone depart this life intestate, be it through his neglect, be it through sudden death; then let not the lord draw more from his property than his lawful heriot. And, according to his direction, let the property be distributed very justly to the wife, and children, and relations; to every one, according to the degree that belongs to him."

73. "And where the husband dwelt without claim or contect, let the wife and the children dwell in the same, unassailed by litigation. And if the husband, before he was dead, had been cited; then let the heirs answer, as himself should have done if he had lived."

## IF A WIDOW: THAT SHE CONTINUE XII. MONTHS HUSBANDLESS

74. "And let every widow continue husbandless a twelve-month: let her then choose what she herself will; and if she, within the space of a year, choose a husband, then let her forfeit her 'morgan-gyfu,' and all the possessions which she had through the first husband; and let the nearest kinsman take the land and the possessions that she had before. And let him (the husband) be liable in his 'wer' to the king, or to him to whom he may have granted it. And though she be taken forcibly, let her forfeit the possessions, unless she be willing to go home again from the man, and never again be his. And let not a widow take the veil too precipitately. And let every widow pay the heriots, 'wite-less,' within twelve months; except it be convenient to her earlier."

75. "And let no one compel either woman or maiden to him whom she herself mislikes, nor for money sell her; unless he is willing to give any thing voluntarily."

OF LUCRE?

63. "If anyone commit incest, let him make 'hot' for it according to the degree of kin, as well with 'wer,' or with 'wite,' and with all his possessions. It is by no means alike whether a man lie with a mister, or if it were a distant relative."

OF WIZARD AND MAID.

64. "If anyone revile a widow, let him make 'hot' for it with his 'wer.' If anyone revile a maid, let him make 'hot' for it with his 'wer.'"

THAT NO WOMAN COMMIT ADULTERY.

65. "If, during her husband's life, a woman lie with another man, and it become public, let her afterwards be for a sorry show as regards herself, and let her lawful husband have all that she possessed; and let her then forfeit both nose and ears, and it is to be a precaution, and the 'lad' tell, let the bishop woo his power, and doom severely."

66. "If a married man lie with his own maidservant, let him forfeit her, and make 'hot' for himself to God and to men. And he who has a lawful wife, and also a concubine, let no priest administer to him any of those rites which ought to be administered to a Christian man ere he desist, and no deeply make 'hot' he the bishop any teach-him; and let him ever depart from the like."

OF THE HERIOT.

71. "And if anyone depart this life intestate, be it by sudden misfortune, be it through sudden death; then let not the land off-go from his property than his lawful heriot. And, according to his direction, let the property be distributed very justly to the wife, and children, and relations to every one, according to the degree that belongs to him."

72. "And where the husband dwelt without claim or contest, let the wife and the children dwell in the same unmolested by litigation. And if the husband, before he was dead, had food eldest; then let the heir answer, as himself should have done if he had lived."

IV A NIGHT. THAT SEE CONTINUE XII. MONTHS

## THE LAWS OF KING CNUT.

### OF STOLEN PROPERTY.

77. "And if any man bring a stolen thing home to his cot, and he be detected (by the owner); it is just that he (the owner) have what he went after. And unless it has been brought under his wife's key-lockers, let her be clear; for it is her duty to keep the keys of them; namely, her 'hord-ern,' and her chest, and her 'tege.' If it be brought under any of these, then is she guilty. And no wife may forbid her husband that he may not put into his cot what he will. It was ere this, that the child which lay in the cradle, though it had never tasted meat, was held by the covetous to be equally guilty as if it had discretion. But henceforth I most stremuously forebid it, and also very many things that are very hateful to God."

THE LAWS OF KING ONUT.

OF STOLEN PROPERTY.

77. "And if any man bring a stolen thing home to his cot, and be detected (by the owner); it is just that he (the owner) have what he went after. And unless it has been brought under his wife's key-lockers, let her be clearly for it is her duty to keep the keys of them; namely, her 'lord-ers,' and her chest, and her 'toge.' If it be brought under any of these, then is she guilty. And no wife may forbid her husband that he may not put into his cot what he will. It was ere this, that the child which lay in the cradle, though it had never tasted meat, was held by the covenous to be equally guilty as if it had direction. But henceforth I most strenuously [illegible] it, and also very many things that are very hateful to God."

NOTES ON THE LAWS

Ascribed To

KING HENRY I.

CAP. I.

III. "Liberty of marriage, recognized by Cn. Sec. 74., is here abridged; but it is forbidden to demand money for the license required, as by the law of Cnut."

IV. "Liberty of marriage to widows is recognized in Ethelr. VI. 26. and V. 21., and confirmed by Cn. Sec. 74, but only after a twelvemonth's widowhood. The latter restriction is here omitted, but the absolute liberty of marriage is reduced to a security from being married against their will."

V. "By Inae 38. the custody of orphans was given to their mother, and the care of the ' ' to the nearest of kin."

CAP. LXX

XCV. " 'Si mulier homicidium faciat,' &c. It appears that the husband and husband's family were not liable to make satisfaction for homicides committed by the wife; but that she, her children, and relations, were liable. Edm. 7. (pp. 256, 257.)"

CAP. LXXVII.

CIII. " 'Si quis de servo patre,' &c. The only provision on this subject in the Saxon laws is a general declaration, that children born in are , and children born in freedom are free. Ecg. P. c. 25. Th. P. XVI. 33. n. I. If a woman was condemned to slavery while in a state pregnancy, the child was born free. Th. P. XVI. 33. n. I. On the other hand, if a female slave was manumitted after she became pregnant, her child was born a slave. Ecg. Conf. c. 25. See upon this subject Glanv. lib. 5 c. 6; Bracton, lib. 1. c. 6. sec. 4, 5; Fleta, lib. 1. c. 3, 4; Britton, c. 31. p. 156; Mirror, c. 2. sec. 28; Littleton, sec. 187, 188; and Fortescue, sec. 42, who says, 'Lex Angliae nunquam matris, sed semper patris conditionem imitari partum judicat.'"

"It appears that the general maxim above quoted is as old at least as this compilation; and that, as a consequence flowing from it, children born of a serf and a free-woman in marriage have been always reputed serfs; but that children born of freewomen unmarried, though begotten by serfs, have always been reputed free; though this exception is not mentioned here. It does not appear, however, that bastards, as such, were necessarily free in the time of Bracton: among those born servi he enumerates children 'ex nativa soluta, quamvis ex patre libero.' Lib.

# A N C I E N T

# L A W S  A N D  I N S T I T U T E S

# O F

# E N G L A N D

V O L. II.

# ECCLESIASTICAL LAWS

CANONS ENACTED UNDER KING EDGAR

LAW OF THE NORTHUMBRIAN PRIESTS

INSTITUTES OF POLITY, CIVIL AND ECCLESIASTICAL

THE CANONS OF AELFRIC

N A I N I L S Ð Þ

AELFRIC'S PASTORAL EPISTLE

ECCLESIASTICAL INSTITUTES

S Æ L Ð L I L S N I

Æ H J

l. c. 6. sec. 4. Fleta also classes among those born servi the children 'ex soluta nativa, quia sequitur conditionem matris, a quocunque fuerit genitus, libero vel nativo.'"

"It appears that Britton held the same doctrine on this point with Bracton and Fleta, but the contrary is held to be the common law by Lord Coke, in his commentary on the above-cited passage from Littleton. It appears also that the principle laid down by Bracton and Fleta, of deciding on the status of the child from the status of the mother at the time of its conception, is as old as the Penitentials of Theodore and Ecgbert. This principle is indeed carried further by Bracton than by the Saxon bishops, and by Fleta still further."

"The Mirror makes the marriage of the parents an essential condition to the liberty of the offspring. 'Those are villaines who are begotten of a freeman and a neife, and born out of matrimony.' Ch. 2 sec. 28. Britton also appears to consider the same condition essential. Ch. 31. p. 156. And Fortescue (chap. 42.) asserts the same doctrine as is here laid down. Littleton makes the offspring of a neife who marries a freeman free: 'si niefe prend frank home a sa baron, lour issues serra frank.' Sec. 187. On which Lord Coke notes, that the neife marrying a freeman is enfranchised during the coverture, and therefore, by the common law of England, the issue is free. 123a."

"Bastards, in the time of Littleton, were born free, whatever was the condition of the mother."

"It appears on the whole, that the construction of the law became gradually more favourable to personal liberty after the time of Glanvile."

## C A N O N S

### ENACTED UNDER KING EDGAR.

21. "And we enjoin, that a man abstain from concubinage, and love his lawful wife."

25. "And we enjoin, that every man forego his wife on feast-tides and lawful fast-tides."

44. "And we enjoin, that no woman come near to the altar, while mass is celebrating."

60. "And we enjoin, that no priest love over much the presence of woman, but love his lawful spouse, that is, his church."

### DE CONFESSIONE.

6. "And let him say then, with penitent mind, and humbly, his confessions to his confessor, humbly bending; and thus let him say: I confess to Almighty God, and to my confessor, the spiritual leech, all the sins by which, through cursed spirits, I have ever been defiled, either in deed or in thought, or with man or with woman, or with any creature, sins natural or unnatural."

I. c. 6, par. 6. Plato also dispose among those born serfs the children "of noble nature, given excellent conditions during childhood, a generous fourth portion, liberty and nature."

"It appears that Britton held the same doctrine on this point with Bracton and Fleta, but the contrary is held to be the common law by Lord Coke, in his commentary on the above-cited passage from Littleton. It appears also that the principle laid down by Bracton and Fleta, of declaring or the status of the child from the status of the mother at the time of its conception, is as old as the Twelfth Century of Theodore and Ecfrid. This principle is indeed carried further by Bracton than by the canon himself, and by Fleta still further."

"The Mirror makes the marriage of the peasant an essential condition to the liberty of the villeins. 'There are villeines who are bought of a freeman and a neife, and born out of marriage.' Ch. 2, par. 26. Britton also appears to consider the same condition essential. Ch. 11, s. 186. And Fortescue (chap. 42.) asserts the same doctrine as le loie laid down. Littleton makes the offspring of a neife who married a freeman (and 'at their proper cost') free, by the canon law of England, the issue is free. Lite."

"Bracton, in the time of Littleton, more born free, whatever was the condition of the mother."

"It appears on the whole, that the construction of the law became gradually more favorable to personal liberty after the time of Glanville."

## CANONS

### CHAPTER THREE KING EDGAR.

24. "And we ordain, that a man abstain from covetousness, and love his lawful wife."

25. "And we ordain, that every man forego his wife or leave either his lawful inheritance."

26. "And we ordain, that no woman have power to slay her child, while man is celebrating."

27. "And we ordain, that to priest love ever must the sorrow of women, but love his lawful spouse, that is, his church."

### IN CONFESSIONE.

6. "And let him say that, with resolute mind, and humbly, woman, or wish any creature, vile natural or unnatural."

## LAW OF THE NORTHUMBRIAN PRIESTS.

35. "If a priest forsake a woman, and take another, let him be excommunicated."

61. "And we prohibit, with God's prohibition, that any man have more wives than one, and let her be lawfully betrothed and given; and let no man marry among kin more near than without the IIII. degree, nor any man marry among his spiritual kin; and if any one do so, let him not have God's mercy, unless he abstain, and make 'bot,' as the bishop may prescribe."

63. "If any one lie with a nun, let both be liable in the 'wer;' both he and she; and if they die in that sin, without abstaining, let them forfeit a hallowed grave and God's mercy."

64. "If any one forsake his lawful wife, as long as she lives, and unlawfully wed another woman, let him not have God's mercy, unless he make 'bot.'"

65. "But let every one lawfully keep his wife, as long as she lives, unless it be, that they both choose, with the bishop's counsel, to separate, and will thenceforth observe chastity."

## INSTITUTES OF POLITY,

## CIVIL AND ECCLESIASTICAL.

### XVI. OF PRIESTS AND NUNS.

"It is right that priests, and equally well nuns, live according to their rule, and preserve chastity, as they desire to dwell in a minister, or command respect before the world."

### XVII. OF WIDOWS.

"It is right that widows earnestly follow the example of Anna, who was in the temple day and night, zealously serving: she fasted very often, and was devoted to prayers, and with groaning mind called to Christ, and distributed alms, oft and frequently, and ever propitiated God, as much as she was able, by word and deed, and has now for reward heavenly mirth. So should a good widow obey her Lord."

### XXII. OF LAYMEN.

"It is right that men in orders direct laymen how they shall most rightly hold their conjugal state. It is a proper life, that a bachelor continue in his state of bachelor, until he take a wife in lawful maiden matrimony; and have her afterwards, and none other, as long as she lives; but if it happen that she dies, then it is most proper, that he thenceforth remain a widower; though, by the apostle's leave, a layman may, for need, marry a second time, but the canons forbid the benedictions thereto, which are appointed to a first marriage; and penance is also appointed for such men to do; and it is forbidden to the priest to be, in the manner he ere was, at the marriage, when a man marries again, or to give the benediction, which belongs to a first marriage. By this it may be known, that it is altogether not right that a man take a wife, or a woman a husband oftener than once; and, at all events, it is too frequent, if it take place a third time, and altogether sinfully done,

LAW OF THE MINNESINGER FAIRIES.

56. "If a priest forsake a woman, and take another, let him be excommunicated."

57. "And as touching, with God's prohibition, that any man have more wives than one, and let her be lawfully betrothed and wived; and let no one marry another's wife, nor beat her without the least; decree, for any one nearly akin to a spiritual kin, and if any one do so, let him not have God's mercy, unless he obtain, and make 'bot,' as the bishop may prescribe."

62. "If any one lie with a nun, let both be liable to the 'wer;' both be and one; and if they die in that sin, without atonement, let them forfeit a polluted grave and God's mercy."

64. "If any one forsake his lawful wife, as long as she live, and unlawfully and another woman, let him not have God's mercy, unless he make 'bot.'"

65. "But let every one lawfully keep his wife, as long as she live, unless it be, that they both choose, with the bishop's counsel, to separate, and will thenceforth observe chastity."

---

INSCRIPTURE OF POETRY.

CIVIL AND ECCLESIASTICAL.

---

XVI. OF INSECTS AND WORMS.

"It is right that private, and equally well cure, lay medicine to sheep rule, and [illegible] before the world."

---

XVII. OF MIGHT.

"It is right that widows earnestly follow the example of Anne, who was in the temple day and night, zealously perform the fasting and prayer, and was devoted to prayers, and with fervour cried unto God, and distributed alms, oft and frequently, and ever- [illegible] Christ, as much as she was able, by word and deed, and has now for nearly heavenly glory. To should a good widow obey her lord."

---

XXII. OF LAWMEN.

"It is right that men in orders direct lawful how they shall most rightly hold their [illegible] state. 'If he a tenor life,' that a penitent continue in his state of penitence, until he take a wife in lawful wedlock solemnly, and have her elsewards, and none other, or live or she live: but if it happen that she die, then it is lawful for the consent forbid the penitentiaries thereto, which are appointed to first contract and lawful in also allotted for such men as to not and it is forbidden to the priest to be, in the manner be are was, or the marriage, when a man nearly akin, or to give the benedic- tion, which before to a first marriage. By this it may be known, that it is altogether not right that a man take a wife', or a woman a husband other than dead, it all events, it is too [illegible] quest, it it take time a short time, and altogether carefully done,

if it take place oftener: and though a wife be allowed to laymen, yet it is necessary that they understand how she is allowed. Let not laymen at feast-tides and fast-tides have connexion through concubinage with woman, no more than men of sacred orders may at any time."

## XXIII. OF MEN IN ORDERS.

"To men in orders is fitting all chastity, because it is their duty to forbid every unchastity to all other men, and of all chastity, if they do rightly, they ought in themselves zealously to set an example; for it is very terrible, that they, who should preach righteousness to all Christian men, and also give a good example, are some become an example for perdition rather than for benefit: those are the adulterers who, through holy orders, have entered into an ecclesiastical marriage, and afterwards broken it. To no minister of the altar is it allowed to marry, but it is forbidden to everyone; yet there are now altogether too many who commit and have committed adultery; but I pray, and, for love of God, earnestly command, that this may cease. To a layman every woman is forbidden, except his lawful wife. Men in orders are some so deceived by the devil, that they marry unrighteously, and foredo themselves by the adultery in which they continue; but I earnestly pray, that this deadly sin may henceforth carefully be abstained from. The church is a priest's spouse."

"Constantine the great emperor assembled a very great synod in the city of Nice, for confirmation of the true faith. At that synod there were CCCXVIII. bishops gathered from many nations, and they there published the true faith, and established then, in manifestation thereof, the mass creed, which is widely sung, and the church services they excellently directed, and many other things, regarding both God's servants, and God himself. They said there all unanimously, that it was right, if a minister of the altar, that is a bishop, or a mass-priest, or a deacon, married, that he forfeited his order forever, and should be excommunicated, unless he should repent and the more deeply atone. Four synods were assembled on account of true faith with respect to the Holy Trinity, and Christ's humanity. The first was at Nice, and the second was afterwards at Constantinople; there were CL. bishops; the third was at Ephesus, of CC. bishops, and the fourth was at Chalcedon, of many bishops together: and they were all unanimous in all those things, which had before been established at Nice, and they all forever forbade all marriage to the ministers of the altar. Let them now, who are to that degree daring, that they contemn God, and the decree of so many holy men as were assembled at these synods, and everywhere since, think what reward they may expect for themselves, and indeed they need not expect, but know for certain, that they shall have an evil reward, and God's anger sternly, because they so anger God, by living all their life in filth. Ministers of the altar I beseech, that they bethink themselves, and refrain from every filth; and let those, who before this had the evil custom of decorating their women as they should the altars, refrain from this evil custom, and decorate their churches, as they best can; then would they command for themselves both divine counsel and worldly worship. A priest's wife is nothing but a snare of the devil, and he who is ensnared thereby on to his end, he will be seized fast by the devil, and he also must afterwards pass into the hands of fiends, and totally perish. But let everyone earnestly help himself, the while he can and may; and let every man abstain from unrighteousness, then will he be secure against eternal punishment: and also he who shall continue in good deeds on to his end, shall for that have eternal reward. Now is the truth said to you, understand yourselves as you will. May God strengthen you to your own benefit, and preserve us all. So may his will be. Amen."

it is into place offered. And thou a will be allowed to leave,
yet is necessary that they understand how she is allowed. But
not laymen at least-like and last-like have connexion through
conchiliage with woman, no more than men of sacred orders may at any
time."

XXIII. OF MEN IN ORDERS.

"To men in orders is first all chastity, because it is their duty to forbid every wantonness to all other men, and of all chastity, if they do rightly, they ought in themselves zealously to set an example; for it is very terrible, that they, who should preach righteousness to all Christian men, and also give a good example, are come become an example for perdition rather than for benefit: those are the adulterers who, through holy orders, have entered into an ecclesiastical marriage, and afterwards broken it. To no minister of the altar is it allowed to marry, but it is forbidden to everyone; yet there are not altogether too many who commit the unlawful adultery; but I pray, and, for love of God, that this deadly sin may henceforth carefully be abstained from. The church is a priest's spouse."

"Constantine the first emperor assembled a very great synod in the city of Nice, for confirmation of the true faith. At that synod there were CCCXVIII. bishops gathered from many nations, and they there published the true faith, and established them, in many different sheriffdoms, the mass creed, which is widely sung, and the church services they excellently directed, and many other things, regarding both God's servants, and God himself. They said there all unanimously, that it was right, if a minister of the altar, that is a bishop, or a mass-priest, or a deacon, married, that he forfeited his order forever, and should be excommunicated, unless he should repent and the more deeply atone. Four synods were assembled on account of true faith with respect to the Holy Trinity, and Christ's humanity. The first was at Nice, and the second was at Ephesus, of CC. bishops, and the fourth was at Chalcedon, of many bishops together: and they were all unanimous in all those things, which had before been established at Nice, and they all forever forbade all marriage to the ministers of the altar. Let them now, who dare to that degree darken, that they continue God, and the decree of so many holy men as were assembled at those synods, and everywhere since, think what reward they may expect for themselves, and indeed they need not expect, but know for certain, that they shall have an evil reward, and God's anger eternally, because they so angry God, by living all their life in filth. Ministers of the altar I beseech, that they publish themselves, and refrain from every filth; and let those, who before this have had the evil custom of decorating their women as they should the altars, refrain from this evil custom, and decorate their churches as they best can; then would they command for themselves both divine counsel and worldly notably. A priest's wife is nothing but a snare of the devil, and he who is ensnared thereby on to his end, he will be seized fast by the devil, and he also must afterwards pass into the bonds of flends and totally perish. But let every one earnestly help himself, the while he can and may; and let every man abstain from wickedness, then will he be secure against eternal punishment: and also he who shall continue in good deeds on to his end, shall for that have eternal reward. Now is the truth said to you, understand yourselves as you will. May God strengthen you to your own benefit, and traverse us all. So may God his will be. Amen."

## THE CANNONS OF AELFRIC.

### OF THE SYNOD OF PRIESTS.

1. "I say to you priests, that I will not bear your negligence in your service, but I will truly say to you how it is constituted with regard to priests. Christ himself established Christianity and chastity, and all those who walked with him, in his way, forsook all worldly things, and society of woman; for he himself said in one of his gospels: 'He who hateth not his wife is not a disciple worthy of me.'"

5. "They all decreed, by an unanimous determination, that neither bishop, nor mass-priest, nor deacon, nor any regular canon, should have in his house any woman, unless it were his mother, or his sister, or his father's sister, or his mother's sister, and that he who should do otherwise should forfeit his order."

6. "Now this will seem to you strange to hear, because ye have brought your wretchedness so into a custom, as if it were no danger that the priest live as the 'ceorl.' Now ye say, that ye cannot be without the services of a woman; but how could then those holy men live without wives? They have now, therefore, the need of their mind's chasity, ever without end, in the life eternal. Priests now often say, that Peter had a wife: they say very truly, because he must so then, by the old law, before he turned to Christ; but he forsook his wife, and all wordly things, after he had turned to Christ, who established chastity."

7. "By the old law, a bishop must take to him a pure maiden, and with her cohabit at fixed times; because that one race should always be of that order, and of no other tribe might there be any bishop; he might not, however, marry more than once, nor might he marry a widow, nor a repudiated woman, but, as we before said, a maiden. They might well have wives in those days, because they never celebrated mass, nor administered the housel to men, but offered beasts in the old wise, until Christ hallowed the housel before his passion, and appointed the mass, which now stands through him."

8. "There was also determined at that same synod, that he who took a widow, or a repudiated woman, or he who married again, that he should never afterwards be received into any order, nor hallowed for a priest; but he who before had a pure wife, was chosen to the pure order, so as the apostle Paul hath written in his epistle."

9. "Nor may any priest be at the marriage anywhere, where a man marries a second wife, or a woman a second husband, nor together bless them, as may be signified to him; so that it were better for them that they continued in chastity. The layman may, however, with the apostle's leave, marry a second time, if his wife desert him; but the canons forbid the blessings thereto, and have established penances for such men to do."

### AELFRIC'S PASTORAL EPISTLE.

18. "Now it is truly thereby manifested to us, both in the old law, and also in the new, that God will have, in his spiritual service, holy ministers male and female, who, with chastity of body and mind, may offer to him the holy housel, so as he minself taught, before his passion."

19. "Of this were mindful the great confessors, whom we

## THE CANONS OF ARLESIA.

### CANONS.

call 'confessores,' and the holy maidens, who lived their lives ever in chastity."

30. "These four synods then also appointed all the services which we have in God's ministry, at mass, and at matins, and at all the canonical hours: and they forbade all marriages ever to ministers of the altar, and especially to mass-priests."

31. "Seven canonical hours they appointed for us to sing daily to the praise of our Lord; as the prophet David said in his prophecy: 'Septies in die,' &c. 'Seven times, my Lord,' said he, 'I have said thy praise in one day, for the righteousness of thy judgments.' The first canonical hour is matins, with the after song appertaining thereto, prime, tierce, sext, none, vespers, compline. These seven canonical hours ye should sing with great attention, to the praise of your Lord, daily in church, always at the appointed hour; and, in like manner, celebrate mass at the appointed time. And it is much that mass may be celebrated once in one day, though it be not celebrated oftener; because our Lord suffered once, and redeemed us all; and now is the mass, which men celebrate, a memorial of his great passion; and much can it effect for all mankind, both living and departed, so as we learn in holy books; and therefore should mass also be fervently celebrated, with great chastity, so as those holy men did, whom we call confessors. Some of these ever continued without wife, some of them forsook that unallowed thing, and served Christ in chastity, so as the Canons inform us, and openly command: that is, that no bishop nor priest have in his monastery, or in his house, any woman, unless it be his mother, or his sister, father's sister, or mother's sister, or a relation of them, from whom no evil report may spring up: and if he do otherwise, the canon says, that he should forfeit his order."

32. "This to you priests will seem grievous, because ye have your misdeeds in custom, so that it seems to yourselves, that ye have no sin in so living in female intercourse, as laymen; and say that Peter the apostle had a wife and children; and we also say that he had so; and some others, who followed our Lord, had also wives and children, before their conversion, but they abstained therefrom after they came to Christ's teaching, and forsook their possessions and wives, and all their worldly things."

38. "The first bishop, whom God himself appointed in the old law, was called Aaron, he was the brother of Moses the great leader; but he never celebrated mass, because no mass was established, before Christ himself, in the new covenant, hallowed housel, and commanded us afterwards so to do in remembrance of him."

39. "Now was the mass established by our Lord Christ; and the holy apostle Peter appointed the canon thereto which we call 'Te igitur.' Aaron, and the old bishops, who were of yore, offered, it is said, to God, in the old manner, bulls and rams, and cattle of every kind, so as no man in these days may do; because all those offerings betokened the slaying of our Lord, who was slain for us, and fastened on a rood, for our redemption; and he then so ended the old covenant. And then, in those days, must Aaron, and his successors afterwards take to them for mate, according to the law of Moses, a pure maiden; because no one of any other race might come to the degree of bishop, except of Aaron's race; nor might they marry with any widow, nor with a repudiated wife, with leave of God, but with a pure maiden; and they should, nevertheless, preserve their chastity, always as often as they offered the sacrificial offerings which were then usual. They must then of necessity have wives in those days, that, at all events, the great episcopal race, which came of Aaron, might not be extinguished; because no race might come to that degree, except that one race which came of Aaron; and thus it ever stood in the old covenant."

42. "Beloved: the canons teach us how we should regulate our lives.

42. "Beloved: the canons teach us how we should regulate our lives. Canons the right rules are called which direct us, and they ordain, that he who of the lay order takes a widow to wife, or a repudiated wife, be never afterwards deacon or mass-priest; and they direct, that the man in orders, who commits foul fornication forfeit his order."

43. "We dare not silently refrain from reciting to you the holy ordinances which ye ought to observe: we shall be guiltless, if we recite them to you; know ye, whether yourselves will secure your souls, and direct yourselves. Ye have not lawfully intercourse with woman at any time; but laymen may marry and justly hold their lawful wives; and the layman, after his wife's decease, may, if needful, marry a second time; and a young widow may marry again after her husband's decease; but, nevertheless, the bridal benediction may not be given them, unless she be a maiden, but they should do penance for their incontinence."

47. "The mass-priest shall rightly preach the true faith to men, and recite sermons to them; and visit sick men, and baptize children, as speedily as they most speedily can be prepared for baptism. And if the sick layman desire to receive unction, let him then confess him, and forgive every grudge, before the unction: and if he recover, and, after the unction, become hale, he may, unless he have vowed the contrary, enjoy the society of woman, and flesh, if he himself will."

## ECCLESIASTICAL INSTITUTES.

VI. "We also command that, at those hours in which the priest sings the mass, no woman approach near to the altar, but let them stand in their places, and the mass-priest will there receive from them the offering which they desire to offer to God. Women should bear in mind their infirmities, and the tenderness of their sex, and therefore they shall dread to touch any of the holy things, belonging to the services of the church. That also laymen should dread, lest they merit such punishment as Uzza merited, when he would support the ark of the Lord, as was not befitting him; he was therefore instantly slain by the Lord."

XII. "It is not right that any woman dwell in the house with a mass-priest, though the canons allowed mother and sister, and those persons from whom no evil report need be expected. But we, nevertheless, forbid every woman, because if the relatives be there, they have other attendants who, it may be feared, may instigate the mass-priest to sin."

XIII. "It is also very much needful to a mass-priest, that he shield himself against drunkenness, and also enjoin the same of the people who are subjected to him. Mass-priests ought neither to eat nor drink at ale-houses, nor should they visit strange men's 'tuns' nor houses, from any eagerness for sights, nor with women, nor with any impure persons, have any convivial associations; but if any respectable father of a family invite them to his house, who, with his wife and with his children, desire to be glad in spiritual joy, and to receive from them refections of spiritual lore, and give them, for true love, bodily refections; then it is natural, that ye humbly visit him, and feed him with your spiritual instructions, who feeds you with his worldly goods."

XXXIII. God's friends are also to be admonished that they teach their children to be obedient to their parents; because the Lord said: 'Honour thy father and thy mother, that thou live the longer on earth.' Also ought the parents to be kind to their children, according to the saying of the apostle: 'Ye parents ought not to provoke your children to anger.' Nevertheless, ye ought not to let

65. "Beloved! the dancer teaches us how we should regulate our lives. Dances are right rules are called which direct us, and they ordain, that he who of the lay order takes a niece to wife, or a relation will, be never afterwards dances or mass-priest; and they direct, that the man in orders, who commits foul fornication forfeit his order."

66. "We have not already refrain from positing to you the holy ordinances which ye ought to observe; we shall be entitled, if we relate them to you: know ye, whether yourselves will secure your souls, and direct yourselves. To have not lawfully intercourse with women at any time; but lawfully and justly hold their lawful wives; and the layman, after his wife's decease, may if needful, marry a second time; and a young widow may marry again after her husband's decease; but, nevertheless, the priest beautiful may not be given them, unless she be a widow, but they should do penance for their inconstancies."

67. "The mass-priest shall rightly preach the true faith to men, and recite sermons to them and visit sick men, and baptize children,—as speedily as they most steadily can be prepared for baptism. And if the wife [person deaths to hospital medicine, let him then confess him, and forgive every wrongs, before the medicine and if he recover, and after the sanction, receive Mass, be any, unless he have vowed the contrary, unity the society of women, and flesh, if he diversify will."

68. "We also command that, at those hours in which the priest attend the mass, no wound approach near to the altar, but let them stand in their places, and the mass-priest all their receive from those the offering with they deify, to offer to God. Women should bear in mind their infirmities, and the tenderness of their sex, and therefore they shall tread to touch any of the holy things, belonging to the services of the church. That also laymen should be pure, lest they merit such punishment as fine merited, when he would support the ark of the Lord, as was the befitting man; he was therefore instantly slain by the Lord."

69. "It is not right that any woman should in the house with a mass-priest, though the person allowed neither and sister, and those persons from whom to evil reports need be expected. Nor no-relatives, forbid every woman, however if the relatives or they have other attendants who, it may be found, may institute the mass-priest to wife."

70. "It is also very much needful to a mass-priest, that he should diligent against drunkenness, and also origin the name of the people who are subjected to him. Mass-priests ought neither to eat drink at ale-houses, nor should they visit women's 'inns' nor houses, from any carouse [drinking. nor with women, nor with any [one person, have any convivial associations; but if any reasonable [matter of a family invite them to his house, who, with his wife and his children, desire to be glad in spiritual joy, not to receive from [those reflections of spiritual love, and give thee, for true love, bodily refreshment; then it is natural, that ye kindly visit him, and feed him with your spiritual instructions, who feeds you with his worldly goods."

71. "Let [priests are also to be admonished that they should [their children to be obedient to their parents, [the Lord saith: 'Honour thy father and thy mother, that thou live the longer on earth.' Also ought the parents to be kind to their children, accordant to the saying of the apostle: 'Ye parents ought not to provoke your children to anger.' Nourish them, ye ought not to let

any of their misdeeds pass unpunished. Solomon said: "He who spareth the rod, hateth his child.' No misdeed in the world to come shall be left without punishment, unless it have been before atoned for; therefore it is better for every one, to correct his children here for their misdeeds, than that God's anger be reserved for them there."

XLIV. "Also to the people it is to be said, that at those tides, when they receive the holy mystery of Christ's body and blood, that is, the holy housel, that they do so with great awe and piety, and that they previously, both with fasts and with alms, both purify themselves, and refrain from conjugal act, and from all vices, and adorn themselves with prayers, and with alms, and with all good works, then so receive it with great piety. Either is very perilous, whether anyone receive it unpurified and negligently, or that anyone be too long without it: and especially no one ought to receive it without his confessor's leave, to whom he shall have previously confessed all that he has wrought against God's will, as far as he can recollect, and have made atonement, according to his sentence. There are, however, many monastic men and widows of such holy religious life, that they may do it daily, when they will."

XLV. "Then we also command those mass-priest who, both on Sundays, and other mass-days, wish to sing before the high mass, that they do so privately, so that they draw off no portion of the people from the high mass; for it is a very bad custom, that many men practise, both on Sundays and also other mass days: that is, that, straightways, at early morn, they desire to hear mass, and immediately after the mass, from early morn, the whole day over, in drunkenness and feasting their minister to their belly, not to God. But we command, that no man taste any meat, before the service of the high mass be completed, but that all, both females and males, assemble at the high mass, and at the holy and spiritual church, and there hear the high mass, and the preaching of God's word. And, as we before said, let not the mass-priests sing about the house of prayer, unless they do so privately, so that they draw off no man from the high mass: and let that be before mid-morning, that they may themselves be at the high mass. We command men of every order, that everyone attend the high mass, except only the hallowed maidens, whose custom or practice it is not to go out of their minster: these should continue within the enclosures of their minster, and there hear mass."